



COMMUNITY DEVELOPMENT DEPARTMENT

PLANNING DIVISION

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CITY OF NEWPORT BEACH

ZONING ADMINISTRATOR STAFF REPORT

April 11, 2013

Agenda Item No. 5

SUBJECT: Eat Chow Outdoor Dining Minor Use Permit - (PA2013-034)
211 62nd Street
▪ Minor Use Permit No. UP2013-005

APPLICANT: Brian McReynolds

PLANNER: Benjamin M. Zdeba, Assistant Planner
(949) 644-3253, bzdeba@newportbeachca.gov

ZONING DISTRICT/GENERAL PLAN

- **Zone:** CV (Commercial Visitor-Serving)
- **General Plan:** CV (Visitor-Serving Commercial)

PROJECT SUMMARY

A minor use permit to allow four seats (50 square feet) for the purpose of outdoor dining to an existing eating and drinking establishment. There are no late hours (after 11:00 p.m.) and no other operational changes are proposed as part of the application. Use Permit No. UP2010-027 for the establishment of Eat Chow Restaurant was approved on December 2, 2010, by the Zoning Administrator and has been operating since early to mid 2011.

RECOMMENDATION

- 1) Conduct a public hearing; and
- 2) Adopt Draft Zoning Administrator Resolution No. _ approving Minor Use Permit No. UP2013-005 (Attachment No. ZA 1).

DISCUSSION

- The proposed project is a request to add a new 50-square-foot outdoor dining area (four seats) to an existing restaurant (eating and drinking establishment). The eating and drinking establishment is a use typically found within this type of

commercial development and is consistent with the land uses permitted within the Commercial Visitor-Serving (CV) Zoning District and the Visitor-Serving Commercial (CV) General Plan Land Use Element category. The outdoor dining area will provide an added amenity to customers of the restaurant and may serve to attract additional customers.

- Pursuant to Section 20.40.040 (Off-Street Parking Spaces Required), outdoor dining areas that contain 25 percent of the interior net public area or less may be excluded from requiring additional parking. The existing eating and drinking establishment contains 600 square feet of interior net public area. The proposed 50-square-foot outdoor dining area is less than 25 percent of the interior net public area ($600 \text{ sq. ft.} \times 0.25 = 150 \text{ sq. ft.}$); therefore, additional parking is not required.
- There are no other changes proposed to the existing operational characteristics of the eating and drinking establishment. This minor use permit will supersede Use Permit No. UP2010-027. All previous, pertinent conditions of approval will remain in full force and effect.
- Staff believes the project is compatible with existing and allowed uses within the commercial and neighboring residential areas. Conditions of approval are provided in the draft resolution so that the potential for negative impacts from its operation is minimized.
- If approved, this minor use permit will supersede existing Use Permit No. UP2010-027 (PA2010-136).

ENVIRONMENTAL REVIEW

The project has been reviewed, and it qualifies for a categorical exemption pursuant to Section 15301 of the California Environmental Quality Act under Class 1 (Existing Facilities) of the Implementing Guidelines of the California Environmental Quality Act. The Class 1 exemption includes the ongoing use of existing buildings where there is negligible or no expansion of use. The proposed project involves the addition of four seats for a new outdoor dining area, a negligible expansion of use, for an existing eating and drinking establishment.

PUBLIC NOTICE

Notice of this application was published in the Daily Pilot, mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant and posted on the subject property at least 10 days prior to the decision date, consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at

City Hall, 3300 Newport Boulevard, Newport Beach, CA 92663 and, the agenda and staff report were available at the Newport Beach Public Library, Mariners Branch, at 1300 Irvine Avenue, Newport Beach, CA 92660.

APPEAL PERIOD:

An appeal may be filed with the Director of Community Development within fourteen (14) days following the date of action. For additional information on filing an appeal, contact the Planning Division at (949) 644-3200.

Prepared by:



Benjamin M. Zdeba
Assistant Planner

GR/bmz

Attachments:	ZA 1	Draft Resolution
	ZA 2	Vicinity Map
	ZA 3	Previous UP2010-027 (PA2010-136)
	ZA 4	Applicant's Description
	ZA 5	Project Plans

Attachment No. ZA 1

Draft Resolution

RESOLUTION NO. ZA2013-DRAFT

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2013-005 TO ALLOW OUTDOOR DINING AT EAT CHOW, AN EXISTING EATING AND DRINKING ESTABLISHMENT LOCATED AT 211 62ND STREET (PA2013-034)

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Brian McReynolds, with respect to property located at 211 62nd Street, and legally described as Parcel A of Lot Line Adjustment No. LLA_2005-012 requesting approval of a minor use permit.
2. The applicant proposes an amendment to a use permit to allow four seats (50 square feet) for the addition of an outdoor dining area at an existing eating and drinking establishment approved by Use Permit No. UP2010-027 (PA2010-136). There are no late hours (after 11:00 p.m.) and no other operational changes are proposed as part of the application.
3. The subject property is located within the Commercial Visitor-Serving (CV) Zoning District and the General Plan Land Use Element category is Visitor-Serving Commercial (CV).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Visitor-Serving Commercial (CV-A).
5. A public hearing was held on April 11, 2013 in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. The project has been reviewed, and it qualifies for a categorical exemption pursuant to Section 15301 of the California Environmental Quality Act under Class 1 (Existing Facilities) of the Implementing Guidelines of the California Environmental Quality Act. The Class 1 exemption includes the ongoing use of existing buildings where there is negligible or no expansion of use.
2. The proposed project involves the addition of four seats to a new outdoor dining area, a negligible expansion of use, for an existing eating and drinking establishment.

SECTION 3. REQUIRED FINDINGS.

Minor Use Permit

In accordance with Section 20.52.020.F of the Newport Beach Municipal Code, the following findings and facts in support of the findings for a use permit are set forth:

Finding

A. *The use is consistent with the General Plan and any applicable specific plan.*

Facts in Support of Finding

1. The existing business operates as a food service, eating and drinking establishment (no late hours) and is located on a highly-traversed section of West Coast Highway east of the Santa Ana River Bridge and west of the Newport Boulevard onramp.
2. The General Plan land use designation for the site is CV (Visitor-Serving Commercial), which is intended to provide for accommodations, goods, and services intended to primarily serve visitors to the City.
3. The proposed outdoor dining area is consistent with the General Plan Visitor-Serving Commercial (CV) land use designation, as it is intended to serve food and beverage products to residents and visitors.
4. The subject property is not part of a specific plan area.

Finding

B. *The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.*

Facts in Support of Finding

1. The site is located within the Commercial Visitor-Serving (CV) Zoning District of the Newport Beach Zoning Code. The intent of this district is to provide for accommodations, goods, and services intended to primarily serve visitors to the City. The proposed outdoor dining area for the existing eating and drinking establishment will help to attract those traveling on West Coast Highway and will add an amenity to serve both residents and visitors.
2. Pursuant to Section 20.20.020 (Table 2-5 Allowed Uses and Permit Requirements), the proposed project requires approval of a minor use permit, because it is located within 500 feet of the residential zoning districts located north and south of the subject site.

3. The proposed use complies with Section 20.48.090 (Eating and Drinking Establishments) relating to required operating standards, and conditions of approval are included in this approval to maintain those requirements.
4. Pursuant to Section 20.40.040 (Off-Street Parking Spaces Required), outdoor dining areas that contain 25 percent of the interior net public area or less may be excluded from requiring additional parking. The existing eating and drinking establishment contains 600 square feet of interior net public area. The proposed 50-square-foot outdoor dining area is less than 25 percent of the interior net public area ($600 \text{ sq. ft.} \times 0.25 = 150 \text{ sq. ft.}$); therefore, additional parking is not required.

Finding

- C. *The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.*

Facts in Support of Finding

1. The proposed project does not involve any alterations to the existing eating and drinking establishment and there are no other proposed changes to the operational characteristics of the eating and drinking establishment. Conditions of approval have been included to ensure any additional changes are reviewed separately.
2. The proposed outdoor dining area will attract more customers and will provide an additional amenity for the existing eating and drinking establishment.
4. The proposed outdoor dining area will be located within a small area of the existing parking lot area serving the commercial building; however, no parking spaces or traffic circulation will be compromised.
5. Although it is located less than 500 feet from a residential district directly to the north (within approximately 30 feet), the outdoor dining area is buffered by a portion of the existing building and a public right-of-way. As conditioned, use of the outdoor dining area will cease at 9:00 p.m. to mitigate potential noise impacts. The applicant is also required to control trash and litter around the subject property.
6. The applicant is required to comply with the California Building Code to ensure the safety and welfare of customers and employees of the establishment.

Finding

- D. *The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.*

Facts in Support of Finding

1. The existing building and parking lot have functioned satisfactorily with the current configuration. City Fire and Police Departments have reviewed the plans and the proposed outdoor dining area is not anticipated to negatively affect emergency access.
2. The existing eating and drinking establishment will not be altered as part of this application. Adequate public services and utilities are provided within the surrounding area.
3. Any work conducted on the project site will comply with all Building, Public Works, and Fire Codes. All ordinances of the City and all conditions of approval will be complied with.

Finding

- E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, a safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding

1. The project has been reviewed and this approval includes conditions to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks, and areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the establishment.
2. The restrictions on seating, hours, and alcohol service will help to prevent adverse impacts for the surrounding residential and commercial uses.
3. The proposed outdoor dining area will add an amenity to the existing eating and drinking establishment and will help to further the goals of the General Plan and Zoning Code with respect to the Commercial Visitor-Serving (CV) designations.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2013-005, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.

2. This resolution supersedes Use Permit No. UP2010-027 which, upon vesting of the rights authorized by this minor use permit, shall become null and void.
3. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 11TH DAY OF APRIL, 2013.

Brenda Wisneski, AICP, Zoning Administrator

DRAFT

EXHIBIT "A"**CONDITIONS OF APPROVAL****Planning Division**

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
2. This approval shall supersede any previous use permits at this location, including Use Permit No. UP2010-027.
3. The outdoor dining area shall be limited to 50 square feet.
4. The interior net public area shall be limited to a maximum of 600 square feet. The number of seats shall be limited to a maximum of 36.
5. The hours of operation for the interior of the restaurant shall be limited to between the hours of 7:00 a.m. and 11:00 p.m., Friday and Saturday, and of 7:00 a.m. and 10:00 p.m. Sunday through Thursday; and any increase in the hours of operation shall be subject to the approval of an amendment to this use permit.
6. Operation of the outdoor dining area shall be limited to the hours between 7:00 a.m. and 9:00 p.m., daily.
7. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
8. This Minor Use Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
9. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require a subsequent review and may require an amendment to this Minor Use Permit or the processing of a new Use Permit.
10. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code.
11. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.

12. No outside paging system shall be utilized in conjunction with this establishment.
13. No live entertainment shall be permitted in conjunction with the permitted use.
14. No dancing shall be permitted in conjunction with the permitted use.
15. Storage outside the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
16. All trash shall be stored within the building or within public dumpsters provided for the convenience of businesses in the area, or otherwise screened from view of neighboring properties except when placed for pick-up by refuse collection agencies. The trash dumpsters shall have a top which shall remain closed at all times, except when being loaded or while being collected by the refuse collection agency.
17. The tenant shall maintain the trash dumpsters or receptacles so as to control odors which may include the provision of fully self-contained dumpsters or may include periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Trash generated by the establishment shall be adequately contained in sealed plastic bags to control odors prior to placement in the trash dumpster.
18. The area outside of the food establishment, including the public sidewalks, walkways or common walkways, shall be maintained in a clean and orderly manner. The operator of the food service establishment shall be responsible for the clean-up of all on-site and off-site trash, garbage and litter generated by the use. The proprietor shall direct his/her employees to actively monitor the public sidewalk and street immediately adjacent to the subject food use facility in addition to the on-site parking lot for any trash or litter. All trash or litter generated by the subject establishment shall be picked up on a regular basis, and during the summer months may require hourly policing of the area outside of the building.
19. All deliveries shall be conducted on-site through the front entrance. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 7:00 a.m., daily, unless otherwise approved by the Community Development Director.
20. Use of the facility's rear door for deliveries shall be prohibited. During the end of the business day, the rear door may be utilized to access the trash enclosure for disposing the remaining refuse accumulated by the facility. The rear doors of the facility shall remain closed at all times. The use of the rear door shall be limited to employee use only. Ingress and egress by patrons is prohibited unless there is an emergency.
21. All mechanical equipment shall be screened from view of adjacent properties and adjacent public streets, and shall be sound attenuated in accordance with Chapter 10.26 (Community Noise Control) of the Newport Beach Municipal Code.
22. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved

in compliance with the provisions of Title 20 Planning and Zoning of the Newport Beach Municipal Code.

23. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Eat Chow Outdoor Dining MUP including, but not limited to, the Minor Use Permit No. UP2013-005 (PA2013-034). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Building Division

24. A covered wash-out area for refuse containers and kitchen equipment, with minimum usable area dimensions of 36-inches wide, 36-inches deep and 72-inches high, shall be provided inside of the establishment, and the area shall drain directly into the sewer system, unless otherwise approved by the Chief Building Official and Public Works Director in conjunction with the approval of an alternate drainage plan.
25. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.

Public Works Department

26. All items related to the outdoor dining area shall be maintained on private property and shall not encroach onto the public sidewalk and right-of-way.
27. Any changes to the existing parking lot design require review and approval from the Public Works Department.

Police Department

28. The service and/or sale of alcohol shall be prohibited within the outdoor dining area.

29. A Special Event Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
30. All owners, managers, and employees selling, serving, or giving away alcoholic beverages shall successfully complete a Licensee Education on Alcohol and Drugs (LEAD) program sponsored by the Department of Alcoholic Beverage Control. The establishment shall comply with the requirements of this section within 180 days of the effective date of this use permit. Records of each owner's, manager's, and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.
31. Approval does not permit the premises to operate as a bar, tavern, cocktail lounge, or nightclub as defined by the Municipal Code, unless the Planning Commission first approves a conditional use permit.
32. No alcoholic beverages shall be consumed on any property adjacent to licensed premises under the control of the licensee.
33. No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed except when served in conjunction with food ordered from the full service menu.
34. Petitioner shall not share any profits or pay any percentage or commission to a promoter or any other person based upon monies collected as a door charge, cover charge, or any other form of admission charge, including minimum drink orders or the sale of drinks.
35. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department on demand.
36. There shall be no on-site radio, television, video, film, or other electronic media broadcast, including recordings to be broadcasted at a later time, without first obtaining an approved Special Event Permit issued by the City of Newport Beach.
37. Food service from the regular menu must be available to patrons until the close of the restaurant.
38. Strict adherence to maximum occupancy limits is required.
39. The use of private (enclosed) "VIP" rooms or any other temporary or permanent enclosures separate from public areas are prohibited.

Attachment No. ZA 2

Vicinity Map

VICINITY MAP



Minor Use Permit No. UP2013-005
PA2013-034

211 62nd Street

Attachment No. ZA 3

Previous UP2010-027 (PA2010-136)



ZONING ADMINISTRATOR ACTION LETTER

PLANNING DEPARTMENT
3300 NEWPORT BOULEVARD
NEWPORT BEACH, CA 92663
(949) 644-3200 FAX (949) 644-3229

Application No.	Use Permit No. UP2010-027 (PA2010-136)
Applicant	Eat Chow Restaurant
Site Address	211 62nd Street Eat Chow Restaurant
Legal Description	Lot 8, Block 2 , Seashore Colony Tract

On **December 2, 2010**, the Zoning Administrator approved the following: A use permit application for the expansion of an existing restaurant with a Type 41 ABC License (Beer and Wine). The hours of operation are from 7:00 a.m. to 11:00 p.m., Friday and Saturday, and 7:00 a.m. to 10:00 p.m., Sunday through Thursday. The restaurant is expanding into the adjacent suite (213A), which was previously a nail salon. The existing Use Permit No. UP 2081 allowed for a restaurant with alcohol sales and a parking waiver of 20 spaces. The property is located in the Commercial Visitor-Serving (CV) District. The approval is based on the following findings and subject to the following conditions.

FINDINGS

1. This project conforms to the requirements of the California Environmental Quality Act (CEQA).

Facts in support of finding:

The project is categorically exempt from the requirements of the CEQA under Class 1 (Existing Facilities), which exempts the ongoing use of existing commercial buildings where there is negligible or no expansion of use. The proposed project involves interior alterations and the change in use of one suite.

2. The use is consistent with the General Plan and any applicable specific plan.

Facts in support of finding:

- The project site is designated as Visitor Serving Commercial (CV) by the Land Use Element of the General Plan. The proposed project is consistent with the CV land use category, which is intended to provide for accommodations, goods, and services intended to primarily serve visitors to the City. The proposed restaurant

use is a visitor-serving use that will serve visitors as well as part-time and full-time residents.

- The subject property is not part of a specific plan area.
3. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.

Facts in support of finding:

- The subject property is located in the Commercial Visitor-Serving (CV) Zoning District. Subject to the approval of a minor use permit by the Zoning Administrator, a Food Service use is permitted within this district pursuant to Chapter 20.20 (Commercial Zoning Districts) of the Zoning Code. Use permits enable the City to control certain uses which could have detrimental effects if not compatible with uses on adjoining properties and in the surrounding area. The proposed restaurant is compatible and complements the uses in this district, including the other restaurants, hotels/motels, and retail stores in the West Newport area. The proposed application does not present any conflicts with the purpose and intent of this district.
 - The proposed use complies with Section 20.48.090 (Eating and Drinking Establishments) in regards to the operating standards. If approved, this Use Permit will be conditioned to maintain the requirements of Section 20.48.090.
 - Section 20.40.060 (Parking Requirements for Food Service Uses) establishes criteria to determine the parking requirement for food uses from 1 parking space for every 30-50 square feet of net public area. Based on the physical design characteristics, operational characteristics, and location of the establishment, a parking requirement of 1 space for every 50 square feet of net public area is sufficient. The gross floor area of the proposed use is approximately 1,600 square feet. The proposed use will not have live entertainment, dancing, a bar, or pool tables. The potential for walk-in customers is high based on the proximity to other commercial uses, residential uses, and the beach. Furthermore, West Coast Highway has parking metered spaces in the vicinity.
4. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.

Facts in support of finding:

- The proposed project is located within a nonresidential zoning district, but is adjacent to residential uses across Newport Shores Drive. The parking lot and primary openings to the restaurant are not oriented toward the residential properties. The operational characteristics are that of a coffee shop and

restaurant, and the establishment will not be open late or act as a bar or nightclub.

5. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g. fire and medical) access and public services and utilities.

Facts in support of finding:

- The lot is 60 feet by 90 feet (5,400 square feet in area), and is developed with a three-tenant building and surface parking lot containing 7 parking spaces. The existing building and parking lot have functioned satisfactorily with the current configuration. The proposed project includes interior alterations and a change in use of one suite and will not negatively affect emergency access. The lot is a corner lot and has doors on two sides of each suite.
6. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

Facts in support of finding:

- The hours of operation of the facility of 7:00 a.m. to 11:00 p.m., Friday and Saturday, and 7:00 a.m. to 10:00 p.m., Sunday through Thursday, will limit any late-night noise impacts on the neighboring residential uses.
- The conditions imposed on the use will reduce any possible detriment to the community by ensuring continued consistency with the intent and purpose of the Municipal Code.
- The restrictions on seating and net public area prevent adverse traffic impacts for the surrounding residential and commercial uses, and patrons who are nearby residents or visitors to the area will likely walk or ride a bicycle to the restaurant. Bus stops are also located in the vicinity.
- The existing parking lot provides seven (7) parking spaces, including one ADA accessible parking space. The subject property is nonconforming due to deficient off-street parking; however the nonconforming status is not intensified by the proposed use. Pursuant to Section 20.38.060 (Nonconforming Uses and Structures – Nonconforming Parking) of the Municipal Code, nonconforming uses in nonresidential districts may be changed to a new use provided no intensification occurs. Suite 211 is currently approved for a restaurant use and is expanding into Suite 213A. When Use Permit No. UP2081 was approved, the parking requirement for that use (located in Suite 211) was twenty two (22) parking spaces. In conjunction with the restaurant approval, a waiver of 20

parking spaces was approved. The previous use of the suite that the restaurant use is expanding into (213A) was a nail salon that required 1 parking space per 80 square feet of gross floor area (seven parking spaces). The proposed restaurant with the expansion does not require any more parking than what was previously approved for the restaurant in Suite 211. The proposed restaurant, including the expansion, requires twelve (12) parking spaces at the rate of one space per 50 square feet of net public area.

7. The project is consistent with the purpose and intent of Section 20.48.030 (Alcohol Sales).

Facts in support of finding:

- The subject property is located in Reporting District 17 (RD 17). The Part One Crimes crime rate in RD 17 is lower than in the adjacent reporting districts (RD 15 and RD 16), and higher than the City overall.

Reporting District	Part One Crimes (Serious offenses)	Part Two Crimes (All other offenses)	Part One Crimes Rate (per 100,000 people)
17	106	55	4,956.25
15	343	242	11,506.43
16	167	107	6,003.49
Newport Beach	2,884	3,350	3,297.31

- The number of alcohol-related calls for service, crimes, or arrests in RD 17 is lower than in the adjacent reporting districts (RD 15 and RD 16). RD 17 amounts to 2.68% of the DUI/Drunk arrests made in the entire City.

Reporting District	DUI/Drunk Arrests	Total Arrests	Calls for Service
17	34	126	1,991
15	361	796	6,663
16	110	323	3,261
Newport Beach	1,270	3,595	69,294

- The subject property is located near residential, but the building is oriented towards the parking lot. The nearest park and recreation facility is across from West Coast Highway, which is a major road with six (6) lanes. No day care centers, hospitals, places of worship, schools, other similar uses, or any uses that attract minors are located near the subject property.
- The subject property is located in the West Newport area, which contains restaurants and retail stores that sell alcoholic beverages. There are six (6) active ABC Licenses in RD 17.

- The subject use does not have any current objectionable conditions, including any recent violations or complaints.

CONDITIONS

1. Development shall be in substantial conformance with the approved site plan, floor plan and elevation(s), except as noted in the following conditions.
2. This approval shall supersede any previous use permits at this location, including Use Permit No. UP 2081.
3. The counter located within the coffee sales side of the restaurant is limited to 45 inches in height.
4. Any addition of seats and/or stand-up counter space for customers shall be subject to the approval of an amendment to this use permit. Any patron seating or stand-up counter located inside or outside of the facility on the subject property or on public property (including sidewalks, streets and/or park property) is prohibited.
5. The net public area shall be limited to a maximum of 600 square feet. The number of seats shall be limited to a maximum of 36.
6. The hours of operation shall be limited to between the hours of 7:00 a.m. and 11:00 p.m., Friday and Saturday, and of 7:00 a.m. and 10:00 p.m. Sunday through Thursday; and any increase in the hours of operation shall be subject to the approval of an amendment to this use permit.
7. The applicant is required to obtain all applicable permits from the City Building and Fire Departments. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.
8. The facility shall comply with the provisions of Chapter 14.24 of the Newport Beach Municipal Code for Sewer Connection, Permits, as determined by the Building Department and the Utilities Department. Cleanout shall comply with Public Works Standard-406-L regarding sewer lateral cleanouts.
9. The project requires the installation of a grease interceptor.
10. A covered wash-out area for refuse containers and kitchen equipment, with minimum useable area dimensions of 36-inches wide, 36-inches deep and 72-inches high, shall be provided inside of the establishment, and the area shall drain directly into the sewer system, unless otherwise approved by the Building Director and Public Works Director in conjunction with the approval of an alternate drainage plan.

11. Any changes to the existing parking lot design require review and approval from the Public Works Department.
12. An encroachment permit is required for all work activities within the public right-of-way.
13. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.
14. The kitchen hood shall be a Type 1 with UL 300 compliant kitchen suppression system.
15. A Special Event Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
16. All owners, managers, and employees selling, serving, or giving away alcoholic beverages shall successfully complete a Licensee Education on Alcohol and Drugs (LEAD) program sponsored by the Department of Alcoholic Beverage Control. The establishment shall comply with the requirements of this section within 180 days of the effective date of this use permit. Records of each owner's, manager's, and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.
17. Approval does not permit the premises to operate as a bar, tavern, cocktail lounge, or nightclub as defined by the Municipal Code, unless the Planning Commission first approves a use permit.
18. No alcoholic beverages shall be consumed on any property adjacent to licensed premises under the control of the licensee.
19. No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed except when served in conjunction with food ordered for the full service menu. There shall be no reduced price alcoholic beverage promotion after 9 p.m.
20. Petitioner shall not share any profits or pay any percentage or commission to a promoter or any other person based upon monies collected as a door charge, cover charge, or any other form of admission charge, including minimum drink orders or the sale of drinks.
21. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records,

which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department on demand.

22. There shall be no on-site radio, television, video, film, or other electronic media broadcast, including recordings to be broadcasted at a later time, which include the service of alcoholic beverages, without first obtaining an approved Special Event Permit issued by the City of Newport Beach.
23. No live entertainment shall be permitted in conjunction with the permitted use.
24. No dancing shall be permitted in conjunction with the permitted use.
25. No games or contests requiring or involving the consumption of alcoholic beverages shall be permitted.
26. Food service from the regular menu must be available to patrons until the close of the restaurant.
27. Strict adherence to maximum occupancy limits is required.
28. The use of private (enclosed) "VIP" rooms or any other temporary or permanent enclosures separate from public areas are prohibited.
29. No outside paging or sound system shall be utilized in conjunction with this food service establishment.
30. Storage outside the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
31. Trash receptacles for patrons shall be conveniently located both inside and outside of the proposed facility; however shall not be located on or within any public property or right-of-way.
32. The area outside of the food establishment, including the public sidewalks, walkways or common walkways, shall be maintained in a clean and orderly manner. The operator of the food service establishment shall be responsible for the clean-up of all on-site and off-site trash, garbage and litter generated by the use. The proprietor shall direct his/her employees to actively monitor the public sidewalk and street immediately adjacent to the subject food use facility in addition to the on-site parking lot for any trash or litter. All trash or litter generated by the subject establishment shall be picked up on a regular basis, and during the summer months may require hourly policing of the area outside of the building.
33. All trash shall be stored within the building or within public dumpsters provided for the convenience of businesses in the area, or otherwise screened from view of

neighboring properties except when placed for pick-up by refuse collection agencies. The trash dumpsters shall have a top which shall remain closed at all times, except when being loaded or while being collected by the refuse collection agency.

34. The tenant shall maintain the trash dumpsters or receptacles so as to control odors which may include the provision of fully self-contained dumpsters or may include periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Department. Trash generated by the establishment shall be adequately contained in sealed plastic bags to control odors prior to placement in the trash dumpster.
35. Prior to the issuance of building permits, the trash enclosure design shall be approved by the Planning Department in conformance with Zoning Code Section 20.30.120. The trash enclosure shall be enclosed by masonry walls; a self closing, self latching, metal gate; landscaping; and a decorative, solid roof for aesthetic and screening purposes. The design of the enclosure shall be integrated with the design of the other on-site buildings and structures.
36. Use of the facility's rear door for deliveries shall be prohibited. During the end of the business day, the rear door may be utilized to access the trash enclosure for disposing the remaining refuse accumulated by the facility. The rear doors of the facility shall remain closed at all times. The use of the rear door shall be limited to employee use only. Ingress and egress by patrons is prohibited in unless there is an emergency.
37. All deliveries shall be conducted on-site through the front entrance. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 7:00 a.m., daily, unless otherwise approved by the Planning Director.
38. All graffiti shall be removed within 48 hours of notification from the City.
39. All mechanical equipment shall be screened from view of adjacent properties and adjacent public streets, and shall be sound attenuated in accordance with Chapter 10.26 of the Newport Beach Municipal Code (Community Noise Control).
40. All signs shall conform to the provisions of Chapter 20.42 of the Municipal Code (Sign Standards) or any applicable comprehensive sign program that is applicable to the subject property.
41. No temporary "sandwich" signs, balloons or similar temporary signs shall be permitted, either on-site or off-site, to advertise the proposed food establishment, unless specifically permitted in accordance with the Sign Ordinance of the Municipal Code. Temporary signs shall be prohibited in the public right-of-way, unless otherwise approved by the Public Works Department in conjunction with the issuance of an encroachment permit or encroachment agreement.

42. Window signs shall not obstruct the view of the interior of the premises (e.g., sales counter, cash register, employees, customers, etc.) from the exterior.
43. Loitering, open container, and other signs specified by the Alcoholic Beverage Control Act shall be posted as required by the ABC.
44. Should this business be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, the leasing company, or property owner.
45. The owner/operator shall maintain a copy of the most recent City permit conditions of approval on the premises and shall post a notice that these are available for review on the premises. The posted notice shall be signed by the permittee.
46. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
47. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
48. This approval was based on the particulars of the individual case and does not in and of itself or in combination with other approvals in the vicinity or Citywide constitute a precedent for future approvals or decisions.
49. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Department.
50. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Eat Chow Restaurant including, but not limited to, the Use Permit No. UP2010-027. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

51. The Zoning Administrator and/or Planning Commission may add to or modify conditions to this approval, or revoke this approval upon a finding of failure to comply with the conditions set forth in Chapter 20.48 of the Municipal Code or other applicable conditions and regulations governing the eating and drinking establishment.
52. This approval shall expire unless exercised within 24 months from the end of the appeal period, in accordance with Section 20.54.060 of the Newport Beach Municipal Code.

APPEAL PERIOD

The applicant or any interested party may appeal the decision of the Planning Director, Zoning Administrator and department staff to the Planning Commission by a written request to the Planning Director within 14 days of the action date. A \$4,280.00 filing fee shall accompany any appeal filed. For additional information on filing an appeal, contact the Planning Department at 949 644-3200.

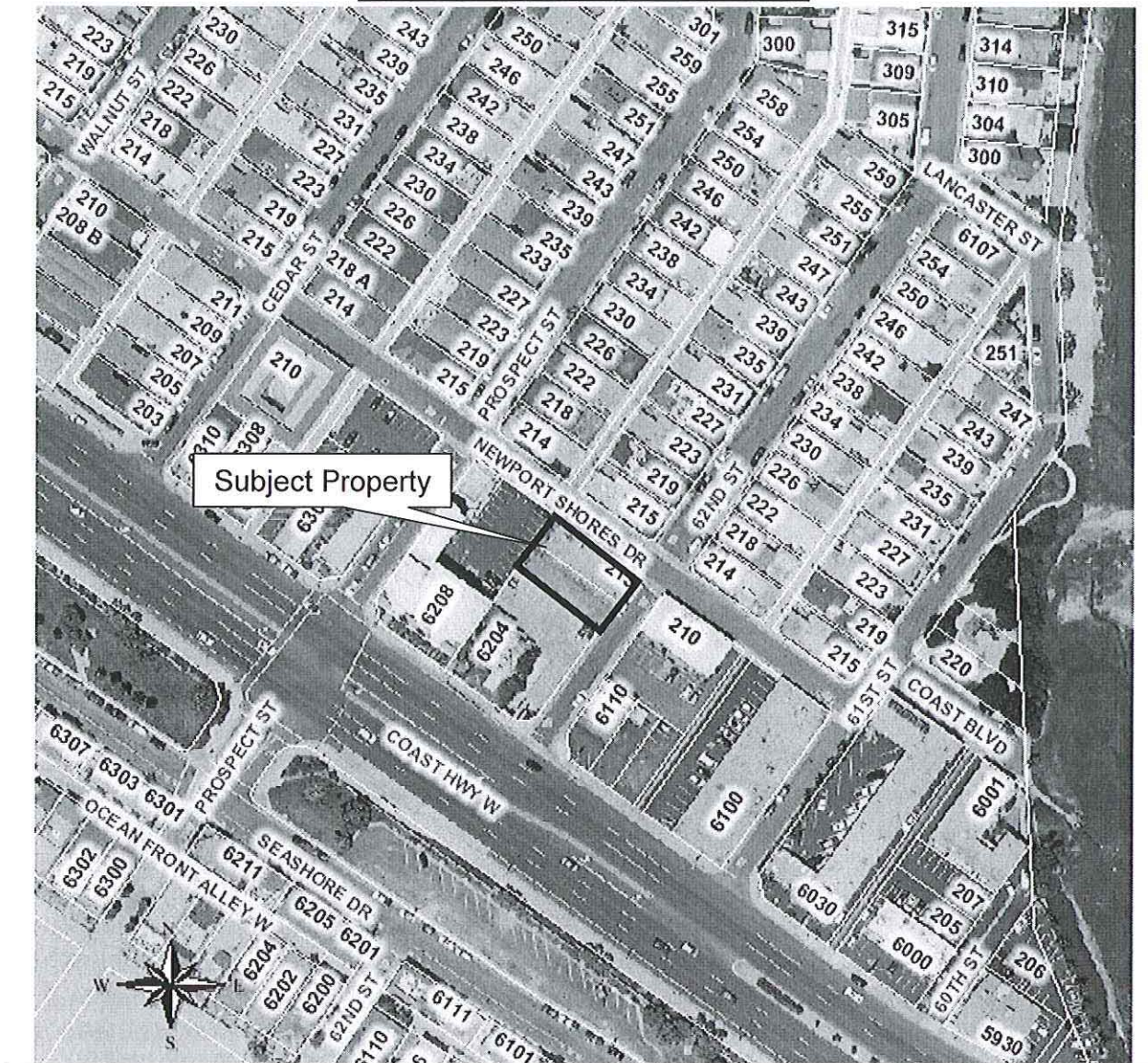
By: _____


Gregg B. Ramirez, Zoning Administrator

PJA/fn

Attachments: ZA 1 Vicinity Map
 ZA 2 Applicant's Project Description
 ZA 3 Project Plans

VICINITY MAP



Use Permit No. UP2010-027
PA2010-136

211 62nd Street

RE: 211 62nd Street remodel – Eat Chow Cafe
Project description and justification for Directors Use Permit

Project Description:

Request to build Eat Chow Cafe at 211 62nd Street in Newport Shores in the same space that was previously approved for the Salud Mexican restaurant in 2005. The new Eat Chow café will be located in units 211 & 213B in the commercial strip mall at the above address. The new Eat Chow will offer breakfast, lunch, and dinner. Our proposed hours of operation are 7 am to 11 pm. We will also be applying for an ABC class 41 wine & beer license, which was approved for the last 4 occupants of the 211 space. Our café is neighborhood oriented and pedestrian friendly, it will not generate any more traffic demands than would have the 2005 plan and perhaps even less.

Justification:

When the location at 211 62nd Street in Newport Beach became available my business partner and I knew it would be a perfect place to open an Eat Chow. We already had loyal clientele who lived in the area, so it's a great fit. But we had no idea how much support we would receive from the residence in Newport Shores and the excitement it would create. On numerous occasions excited Newport Shores residences have called our primary location just to tell us they can't wait for us to open in their neighborhood. When talking to our regular customers from Newport they also bristle with excitement for our arrival to their neighborhood.

From the feedback we have received, Eat Chow will be filling a much needed gap in the area's foodservice. When "The Kind Grind" was open the bulk of their business was morning coffee To Go and small food items. We will fill that need. We will also be offering a full breakfast menu for people in the neighborhood to ride their bikes down in the morning and leisurely eat their breakfast while reading a newspaper. Lunch and dinner will be fantastic as well. We serve an extensive New American menu with a wide range of food choices for all ages and tastes.

Also, families of Newport Shores are working hard to keep up with the high cost of living and as a result one or both parents work long hours and often do not have the time to cook meals. During the time we have owned Eat Chow we have had many substantive conversations with our Newport Shores customers and found a tremendous desire on their part to have a local restaurant that is within walking distance. Also, many locals have small children and cannot easily transport them to have their meals; we will be within baby carriage distance for these families. We will service this market with the same great food and service that has been a tradition at Eat Chow.

In addition to the aforementioned justifications I offer these additional points:

- 1) Building orientation. The building faces away from all homes. All parking, traffic and business will be transacted in the front of the building. The only time a residential neighbor will see our operations will be during small deliveries to the rear door.
- 2) We are primarily a restaurant. We will not have live or loud music, events or anything else that would draw a large and concentrated crowd. Eat Chow will be an excellent neighbor, well aware of its responsibility to the residents.
- 3) We will remodel the interior tastefully. There will be no ad space facing the homes. The additional benefit will be a rise in property values for homeowners as a result of our renovation.
- 4) Since Eat Chow is owner operated we will make sure our café is clean, well-managed, and attentive to the needs of the neighborhood.
- 5) Seating & Parking. In addition to required parking onsite, we will have full use of Spaghetti Bender's parking lot from 7am-4:30pm during the bulk of our most busy time and therefore will have more actual parking than we will realistically need. We can provide you with confirmation of this from Spaghetti Bender's property owner. We have spoken to Ethan Wayne who owns the adjacent building and parking lot about allowing us to use his empty lot after 5pm.

In closing, this project will not only benefit Newport Shores, by offering new services, and our business, by increasing revenue, but it will also benefit the City, by generating new revenue and keeping the demand for traffic counts low.

I appreciate your time and attention in awarding my project a swift approval.

Yours truly,

Brian McReynolds & Eric Doran
Eat Chow Café'

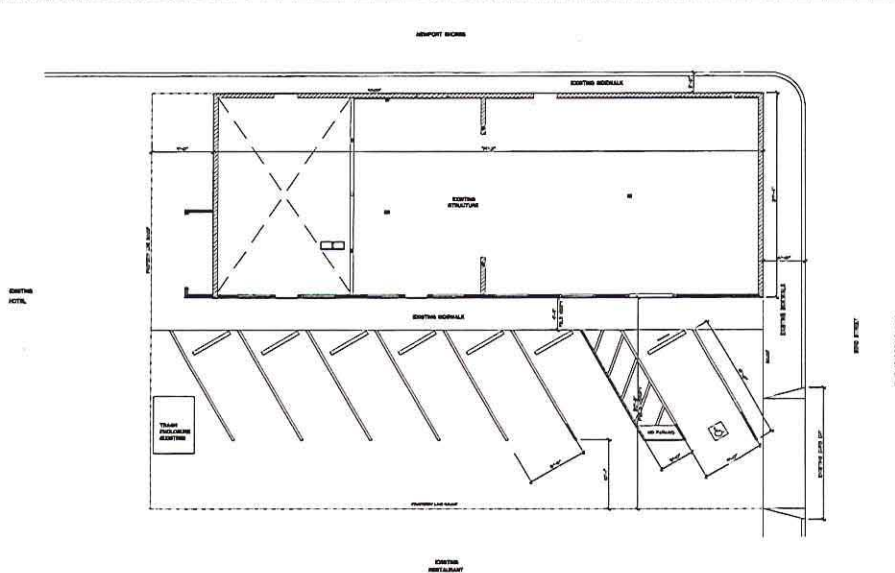
EAT CHOW

211 62nd STREET
NEWPORT BEACH, CA 92663

RECEIVED BY
PLANNING DEPARTMENT

NOV 5, 2010

CITY OF NEWPORT BEACH



PROJECT DATA

PROJECT COMMON NAME:
EAT CHOW
PROJECT ADDRESS/LOCATION:
211 62nd STREET
ASSESSORS PARCEL NUMBER:
040-010-1-00
LEGAL DISCRETION:
3 UNIT, SINGLE LEVEL, COMMERCIAL STRIP MALL
EXISTING LAND USE:
COMMERCIAL
PROPOSED LAND USE:
COMMERCIAL

	EXISTING DEVELOPMENT	PROPOSED DEVELOPMENT
LOT AREA (SQ)	5240 sq/L	5240 sq/L
LOT WIDTH (FT)	88'-02"	88'-02"
LOT DEPTH (FT)	60'	60'
DETACHED YARDS		
FRONT (FT)	50'-00"	50'-00"
SIDE	0'	0'
REAR	0'	0'
GROSS FLOOR AREA (SQ)	2232 sq/L	2232 sq/L
FLOOR AREA RATIO	3	3
BUILDING COVERAGE (IN)	44%	44%
BUILDING HEIGHT (FT)	1'-04"	1'-04"
LANDSCAPING (IN)	0	0
PARKING (IN)	44%	44%
PARKING	4 STALLS	1 STALLS
NUMBER OF EMPLOYEES	5	5
NUMBER OF SEATS	25	25
DWELLING UNITS	0	0
HOURS OF OPERATION	11A-10P	11A-10P



3100 WILLOW AVENUE, SUITE 101
NEWPORT BEACH, CALIFORNIA 92663
TEL: 714.443.1004 FAX: 714.443.1005
ENTERPRISES.NET

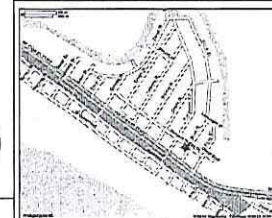
REVISIONS

DATE	REVISION

SCALE: 1/8"=1'-0"
DRAWN BY: GUY
JOB NO.: 10-043
DATE: 10/01/10

**REVISED PLANS
REQUIRED**

VICINITY MAP



EAT CHOW
211 62nd STREET
NEWPORT BEACH, CA 92663

SHEET TITLE
SITE PLAN

36 S-1
SHEET

SITE PLAN



SCALE:
1/8"=1'-0"

PA2010-136 for UP2010-027
211 62nd Street
Eat Chow Restaurant

Attachment No. ZA 4

Applicant's Description

Date 1/14/13

RE: Minor Use Permit for Eat Chow, 211 62nd St. Newport Beach – Outside Seating

To Whom it may concern:

My name is Brian McReynolds and I own Eat Chow Café. Eat Chow is a small café located on 211 62nd St. in Newport Shores. The hours of operation are 8am to 9pm Sunday through Thursday, and 8am to 10pm on Friday and Saturday. I have around twenty employees but only around six or seven are working at any given time. I am writing this letter to ask for the consideration of a Minor Use Permit to put three small tables with chairs on the sidewalk outside my café.

As seen on the plans the tables will be for two people each (two tops) and are pushed up tight against the wall to give plenty of room for passage. The tables will be clean and tidy, and the area will be well swept and maintained for service. The tables will be facing Pacific Coast Highway and will not be visible by residential houses behind the Café.

The tables are not wide so they will adhere to the Americans with Disabilities Act's 48" sidewalk passageway requirements. Also, the total seating space will not even be close to 25% of our total dining area so it will not affect our parking requirements. Further, our beer and wine license doesn't give us the permission to serve alcohol outside so that will not be a concern.

Please consider my proposal for approval.

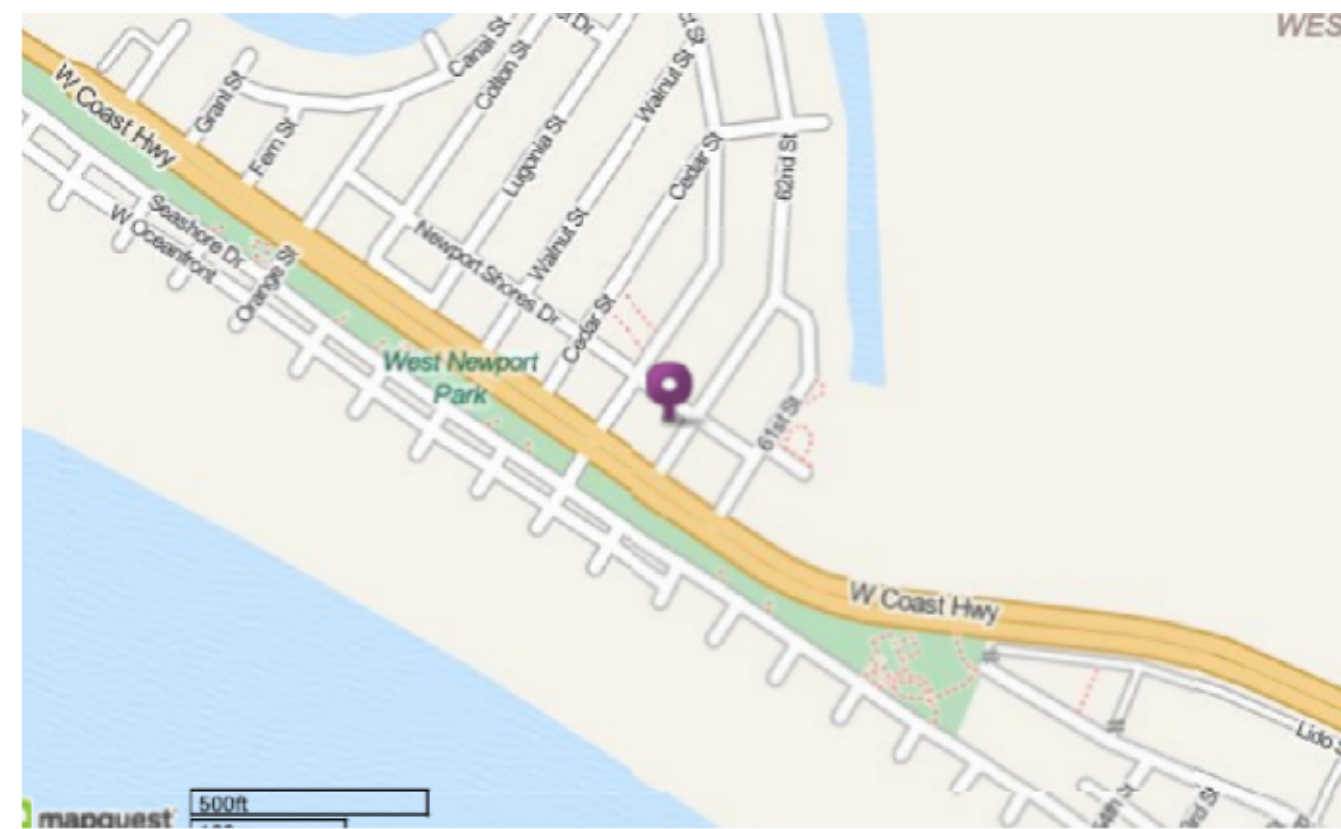
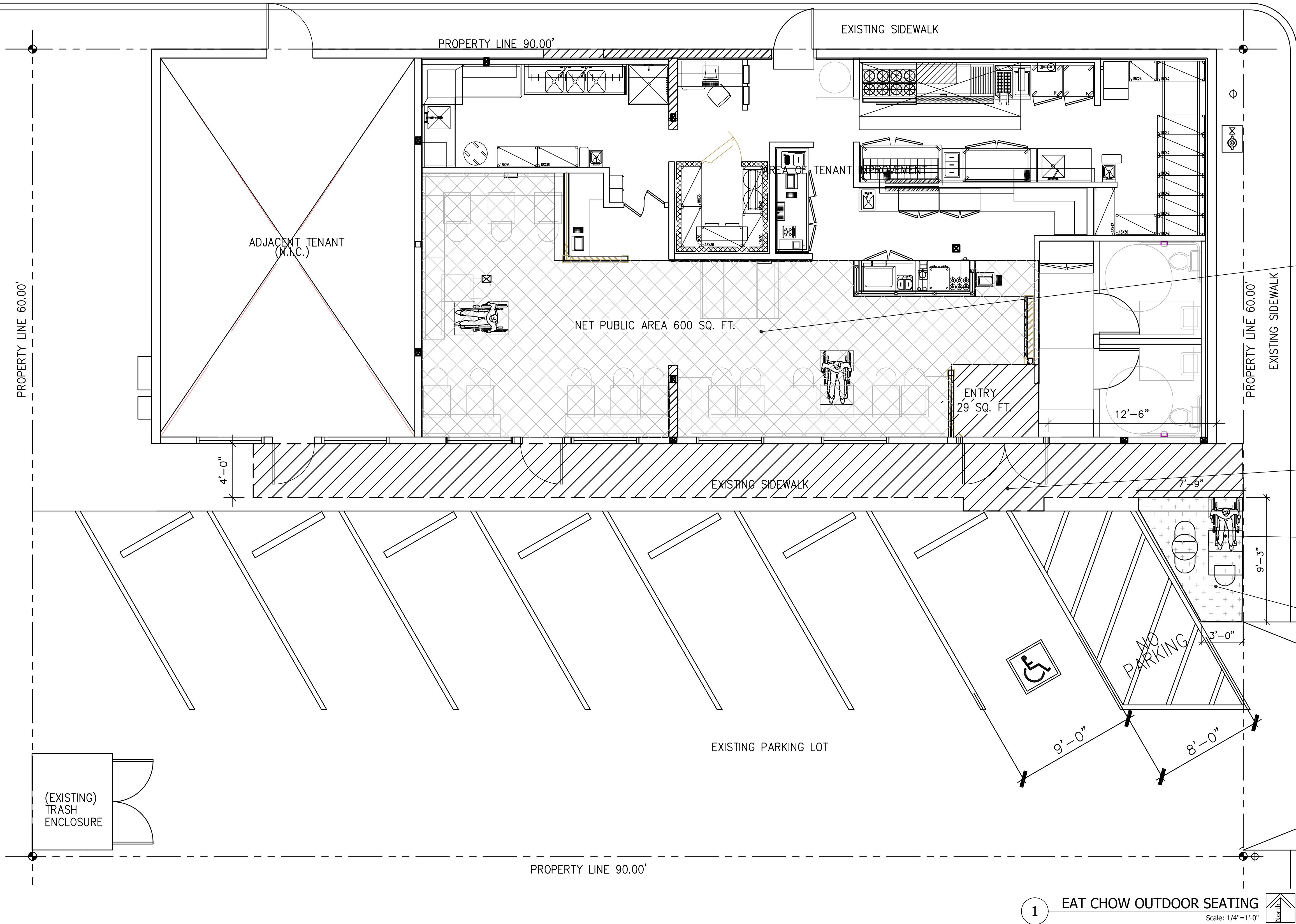
Thank you,



Brian McReynolds
Owner
Eat Chow Cafe

Attachment No. ZA 5

Project Plans



Vicinity Map

Plumbing Fixture Count

PLUMBING FIXTURE COUNT PER CPC 2010 TABLE A

RESTAURANT: 1,645/30= 55 PERSONS
 OUTDOOR: 50 / 30= 02 PERSONS
 TOTAL: 57 PERSONS

29 MEN AND 29 WOMEN

FIXTURES PROVIDED:
 MEN: 1 LAVATORY, 1 WATER CLOSET
 WOMEN: 1 LAVATORY, 1 WATER CLOSET

FIXTURES REQUIRED:
 MEN & WATER CLOSET 1/150
 WOMEN LAVATORY 1/150

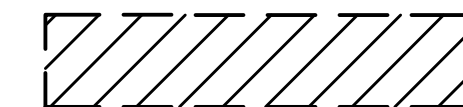
Project Information:

PROPOSED REQUEST: ALLOW OUTDOOR DINING AT EXISTING RESTAURANT.

JUSTIFICATION: INDOOR PUBLIC AREA=600 SF.

ALLOWED: 600 SF X 25% = 150 SF.

PROPOSED: 50 SF.



ACCESSIBLE PATH OF TRAVEL.

TENANT: EAT CHOW
 BRIAN McREYNOLDS
 1802 NEWPORT BLVD.
 COSTA MESA, CA 92627
 (949) 650-2469

DATE	REMARKS
01/31/13	SUBMIT FOR MINOR USE PERMIT
09/20/13	RESUBMIT FOR MINOR USE PERMIT

**PEROS
LAW GROUP, P.C.**

ATTORNEYS AT LAW

19100 Von Karman, Suite 950
IRVINE, CA 92612
TELEPHONE: (949) 838-0260
FACSIMILE: (949) 838-0261
www.peros-law.comWriter's e-mail address:
mvp@peros-law.com

April 4, 2013

Benjamin M Zdeda, Assistant Planner
Zoning Administration, City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660
bzdeda@newportbeachca.govTony Petros, City Council Member
2nd District
3300 Newport Blvd
Newport Beach, CA 92663
tpetros@newportbeachca.gov

Re: Project File No.: PA2013-034
Activity No.: UP2013-005
Location: 211 62nd Street, Newport Beach, CA
Applicant: Brian McReynolds

Proposed outdoor eating area to established eatery Eat Chow, by Mr. Brian McReynolds

Dear Mr. Zdeda & Mr. Petros:

I write in connection with the above-referenced planning application of Mr. McReynolds. I have examined the proposed amendment and I know the site well. On behalf of a local business that received notice, I wish to object strongly to the amendment to permit the outdoor dining to this establishment set forth before the planning commission. I have reviewed the Zoning Administrator Staff Report, Draft Resolution, Draft of the Zoning Administrator Resolution No. ZA2013-draft and all attachments, Zoning Administration Action Letter dated December 2, 2010 and September 27, 2010 letter from Brian McReynolds and Eric Doran project description and justification for director's use permit as well as the January 14, 2013 letter of Mr. McReynolds requesting three tables outdoors. I note from the outset that the paperwork seems to already make the proposed hearing nothing more than a rubber stamp and that the planning division seemingly takes a position that is not neutral as it does not reference the affects upon the neighborhood other than "facts in support of finding" and does not look at the potential problems with the proposal.

Newport Beach is a long established city where development proposals should be considered very carefully. The proposal to add outdoor dining until 11:00 pm as noted in an area that is predominantly residential could lead to loitering, noise to the local residents, traffic/parking issues and transient/vagrant population increases. The subject establishment is only provided 4 parking spaces in an area that is already well known to be difficult to locate parking spaces. The protection of Newport Beach's visual, historic and archaeological qualities is also supported by its residents as well as the planning commission and city council's decisions that note inappropriately planned, or amendments for proposals that fail to take opportunities to improve the character of an area, should not be accepted. The proposed amendment of Mr.

Benjamin Zdeda and Tony Petros
Re: Project file #: PA2013-034
April 4, 2013
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PEROS LAW GROUP

McReynolds would not improve the character of the area, but would add to the noise, traffic, vagrancy of the area which Newport Beach seeks to avoid, in addition to possibly becoming a safety hazard to traffic in the area. The location is a restaurant and not a coffee shop as referenced in some of the notes.

The function of the Planning Division is to promote and enhance the well-being of residents, visitors, property owners, and businesses of the City of Newport Beach. The division accomplishes its mission through programs that encourage high quality development as well as maintenance and revitalization of existing neighborhoods. The site subject to this proposal is within the local development plan, on which the public will be consulted on April 11, 2013 at 3:30 pm at the public meeting. It is anticipated that the proposed amendment goes against the development plan for Newport Beach as for the reasons set forth above. It does not promote or enhance residents, property owners and businesses in the area. In fact, it is anticipated that the already overcrowded parking in the area and streets may become more congested. It may cause issues as patrons for Eat Chow already park in the parking lot owned and posted "Parking for Spaghetti Bender Patrons Only" as evidenced by photos obtained on a random drive by inspection. I do realize that the owner of the establishment is a tenant to the owner of the Spaghetti Bender, but in essence you are permitting two restaurants to operate without adequate parking by the proposal even if they share the adjoining parking lot. Moreover, the restaurant already is adjacent to a residential area on 62nd Street at Newport Shores Drive. Such outdoor dining and drinking of beer & wine as sold by the proprietor to 11:00 pm as proposed would increase noise and also permit smoking that could invade the residential community at night past the Newport Beach curfew hour.

Pressure for the addition here may be limited to the proprietor, mainly for additional seating to the establishment. Mr. McReynolds was permitted to have 5-6 parking spaces for his restaurant and the amount of patrons held inside can easily exceed the parking spaces allotted. This would naturally cause invasion to the local streets and other private properties adjacent and across the street if permitted. In addition, opposition to the proposed variance is concerned about the noise that would be caused by outside dining and consumption of alcoholic beverages by patrons at late hours in an area directly adjacent to a residential area. Such areas are already available elsewhere within the city limits further south on Pacific Coast Highway but are in a predominantly industrial neighborhood. So this is not the creation of a new item or idea for the city of Newport Beach to increase tourism. But it is expansion of an idea better suited for an industrial area to be incorporated into a residential area that already has problems as noted within this objection.

The appropriate parking ratio is one space per 30-50 square feet of public space. See *Newport Beach Municipal Code* § 20.40.040 under the table 3-10 set forth under "Eating and Drinking Establishments" as well as *Newport Beach Municipal Code* § 20.40.060(A). Therefore, Eat Chow was required to have 20 parking spaces for their establishment. The City has already determined that the establishment was non-conforming under *Newport Beach Municipal Code* § 20.38.060 due to the deficient off-street parking and the proposed use will only further make matters worse. Under *Newport Beach Municipal Code* § 20.40.060 (B), conditions for approval...and a change to *any* of the conditions will require an amendment to the permit

Benjamin Zdeda and Tony Petros
Re: Project file #: PA2013-034
April 4, 2013
Page 3

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application.” (Ordinance 2010-21 § 1 Exhibit A. Here, the original use permit contemplated peak use hours during the morning and afternoon. But now, the shift in the times and usage has dramatically altered the peak use to evening hours, when it competes with the Spaghetti Bender over the same shortness of off-street parking.

Proprietor Brian McReynolds is already aware from his other Eat Chow restaurant located in Costa Mesa at 1802 Newport Boulevard, Costa Mesa the differences between the two restaurants he owns. The Costa Mesa restaurant already has four (4) outdoor tables for dining. But the essential differences are location and zoning. The Costa Mesa location is situated in an industrialized area of Costa Mesa. It is not literally 20 feet from a residence as is the case with the proposal at issue here. There is no danger that the noise increase would be noticeable especially with all the traffic that passes in the area of the Costa Mesa location. There, his establishment is located within 100 feet of the landmark Triangle Square Mall and shopping center where such outdoor dining and incidental noise would affect no one. The proposal here, is in a quiet well established residential area as opposed to just off the busiest street in the immediate area where the 55 freeway ends. Parking is also not an issue in Costa Mesa where there is a city public lot located across the street from that establishment.

The proposed variance of the area is particularly ill-considered here. It is a residential area of established homes used by many local residents and tourists walking, jogging, biking, beach access, walking pets, and the outdoor table here would both diminish the aesthetic appearance of the area and cause sidewalk traffic a detour. The only potential location for the outdoor table is directly next to the public sidewalk at the entrance to the parking lot for the Eat Chow establishment. It would not fit any other location. The style is out of keeping with the area's historic character – no other dwelling in the area has an outdoor table, for instance. Additionally, the location of the outdoor table potentially creates a problem if a vehicle entering the parking lot misses the entrance way only slightly. Patrons at the outdoor table could then become victims of a *vehicle v. pedestrian* accident in the already congested area.

What are even more egregious here are the previous violations to the permit by the owner that have occurred over the years. Eat Chow has already been cited for having outdoor dining without a permit before the application. Here the experience proprietor already was aware of the process for obtaining a permit for outdoor dining. He dealt with that very issue at the other location to obtain the outdoor dining permit in Costa Mesa. Yet he consciously did provide outdoor seating here without a permit and was cited. Moreover, in the September 2010 application for permit, the applicant represented he would have his employees park their vehicles away from the restaurant to reduce the impact on the adjacent local residents. This has never occurred with the observation being the employees park as close to the restaurant as possible.

Original Permit Conditions 36 & 37 of the original use permits are also violated routinely by the applicant. Section 36 reads “The use of the facilities rear door for deliveries shall be prohibited.” Delivery trucks are routinely observed illegally parked on Newport Shores Drive adjacent to the rear door and observed making deliveries through the rear door in violation of condition 36. Said section also requires that the rear doors to the facility shall remain closed at all times. However, the door has been observed open too many times to recount at all hours of

Benjamin Zdeda and Tony Petros

Re: Project file #: PA2013-034

April 4, 2013

Page 4

PEROS LAW GROUP

operation of the establishment. Condition 37 reads "All deliveries shall be conducted onsite through the front entrance." Instead, due to the already overcrowded conditions present, all deliveries are conducted "off-site" and are accomplished by either illegally parking behind the property and entering through the back door or parking in the parking lot of the Spaghetti Bender and entering through the front entrance. Either way, it is a violation of the express conditions and has demonstrated the disregard of the conditions for the original use permit.

Furthermore, there is no need for this kind of open air seating in the city of Newport Beach. Many of the restaurants and bars in the more industrialized portions of the city limits already provide outdoor dining and drinking venues such as is being proposed. They are however in better suited and adapted areas that do not encounter the same problems as foreseen here next to a residential area. As an alternative to this proposal, we would support the construction of additional outdoor dining in areas that are more industrialized and not going to increase the noise, traffic and further cause parking issues already prevalent in the city limits.

We understand that the local businesses in the immediate area may share some of these concerns voiced herein. More importantly, the local area residents are also in agreement that some issues set forth herein are unknown and may cause an effect upon their quiet lifestyle based upon discussions this writer has had with area residents during the day there.

Given the two locations of the Eat Chow establishment, Mr. McReynolds already has outdoor seating at his location in Costa Mesa in an area zoned for commercial businesses. That location is less than 3 miles away and only an 8 minute drive. If his patrons want to dine outdoors, they can take a short drive (less than 10 minutes) to get to the location where it is properly designed, zoned and situated to eat and drink outdoors as it will not cause the potential issues here in Newport Beach as discussed herein.

If this application is to be decided by those present at the local meeting set on April 11, 2013 at 3:30 pm, I would like reserve the opportunity to speak at the meeting of the committee at which this application is expected to be decided.

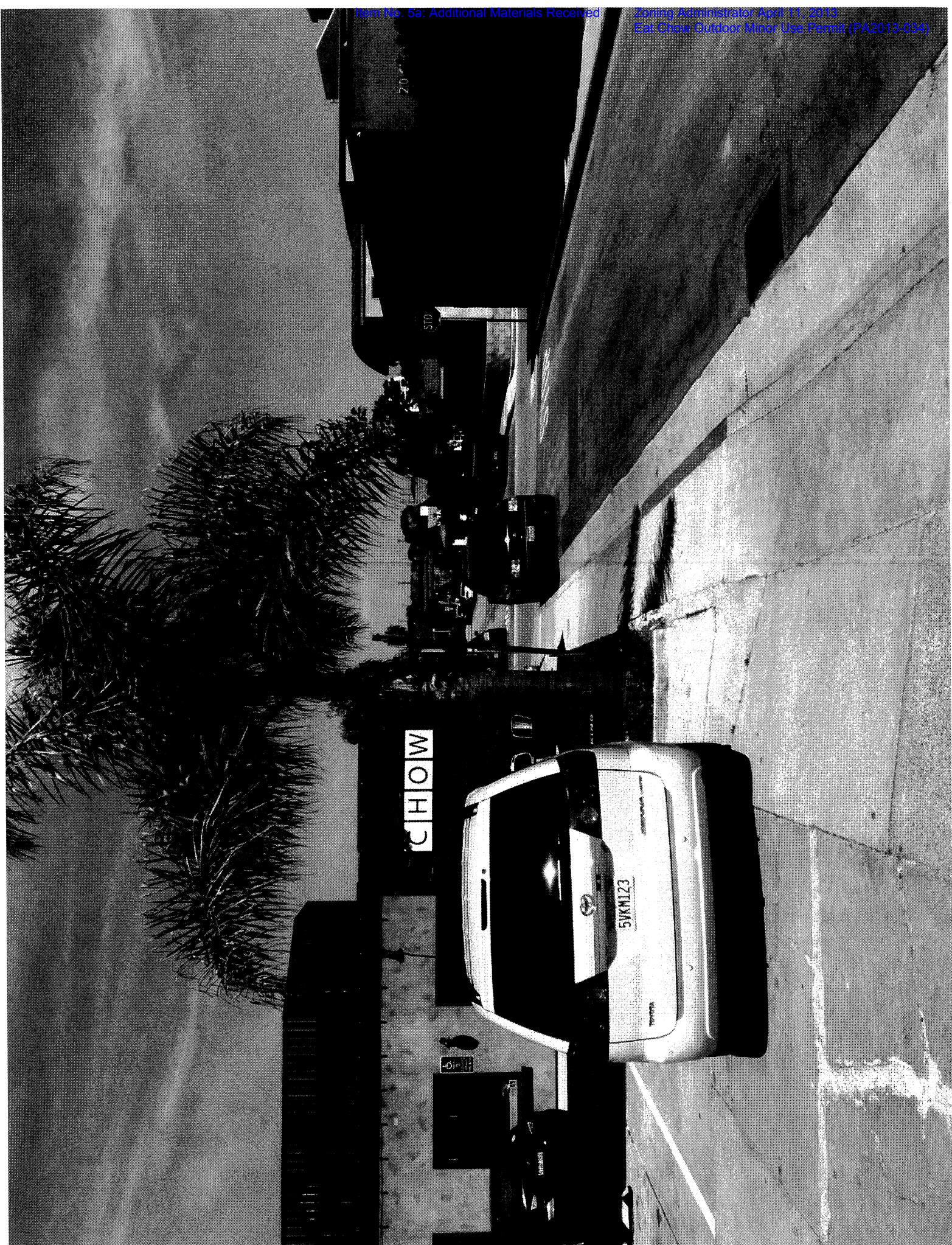
Very truly yours,

PEROS LAW GROUP, P.C.



Michael V. Peros

MVP/dli





**CITY OF NEWPORT BEACH
NOTICE OF PUBLIC HEARING**

NOTICE IS HEREBY GIVEN that on **Thursday, April 11, 2013, at 3:30 p.m.**, or soon thereafter as the matter shall be heard, a public hearing will be conducted in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. The Zoning Administrator of the City of Newport Beach will consider the following application:

Eat Chow Outdoor Dining MUP – An amendment to a use permit to allow four seats (50 square feet) for the addition of an outdoor dining area at an existing eating and drinking establishment approved by Use Permit No. UP2010-027 (PA2010-136). There are no late hours (after 11:00 p.m.) and no other operational changes are proposed as part of the application.

The project is categorically exempt under Section 15301, of the California Environmental Quality Act (CEQA) Guidelines - Class 1 (Existing Facilities).

All interested parties may appear and present testimony in regard to this application. If you challenge this project in court, you may be limited to raising only those issues you raised at the public hearing or in written correspondence delivered to the City, at, or prior to, the public hearing. Administrative procedures for appeals are provided in the Newport Beach Municipal Code Chapter 20.64 (Appeals). The application may be continued to a specific future meeting date, and if such an action occurs additional public notice of the continuance will not be provided. Prior to the public hearing the agenda, staff report, and documents may be reviewed at the Newport Beach Public Library, Mariners Branch, at 1300 Irvine Avenue, Newport Beach, CA 92660 or at the City of Newport Beach website at www.newportbeachca.gov/zoningadministrator. Individuals not able to attend the meeting may contact the Planning Division or access the City's website after the meeting to review the action on this application.

For questions regarding this public hearing item please contact Benjamin M. Zdeba, Assistant Planner, at (949) 644-3253, bzdeba@newportbeachca.gov.

Project File No.: PA2013-034

Activity No.: UP2013-005

Zone: CV (Commercial Visitor-Serving)

General Plan: CV (Visitor-Serving Commercial)

Location: 211 62nd Street

Applicant: Brian McReynolds

A. **Parking Required to Be On-Site.** Parking shall be located on the same lot or development site as the uses served, except for the following:

1. **Townhouses and Multi-Tenant Uses.** Where parking is provided on another lot within the same development site, the parking shall be located within two hundred (200) feet of the units they are intended to serve.
2. **Off-Site Parking Agreement.** Parking may be located off-site with the approval of an off-site parking agreement in compliance with Section 20.40.100(C) (Parking Agreement).

B. **Permanent Availability Required.** Each parking and loading space shall be permanently available and maintained for parking purposes for the use it is intended to serve. The Director may authorize the temporary use of parking or loading spaces for other than parking or loading in conjunction with a seasonal or intermittent use allowed in compliance with Section 20.52.040 (Limited Term Permits).

C. **Maintenance.** Parking spaces, driveways, maneuvering aisles, turnaround areas, and landscaping areas shall be kept free of dust, graffiti, and litter. Striping, paving, walls, light standards, and all other facilities shall be permanently maintained in good condition.

D. **Vehicles for Sale.** Vehicles, trailers, or other personal property shall not be parked upon a private street, parking lot, or private property for the primary purpose of displaying the vehicle, trailer, or other personal property for sale, hire, or rental, unless the property is appropriately zoned, and the vendor is licensed to transact a vehicle sales business at that location.

E. **Calculation of Spaces Required.**

1. **Fractional Spaces.** Fractional parking space requirements shall be rounded up to the next whole space.
2. **Bench Seating.** Where bench seating or pews are provided, eighteen (18) linear inches of seating shall be considered to constitute a separate or individual seat.
3. **Gross Floor Area.** References to spaces per square foot are to be calculated on the basis of gross floor area unless otherwise specified.
4. **Net Public Area.** "Net public area" shall be defined as the total area accessible to the public within an eating and/or drinking establishment, excluding kitchens, restrooms, offices pertaining to the use, and storage areas.
5. **Spaces per Occupant.** References to spaces per occupant are to be calculated on the basis of maximum occupancy approved by the City of Newport Beach Fire Department.
6. **Spaces Required for Multiple Uses.** If more than one use is located on a site, the number of required off-street parking spaces shall be equal to the sum of the requirements prescribed for each use.

F. **Nonconforming Parking and Loading.** Land uses and structures that are nonconforming due solely to the lack of off-street parking or loading facilities required by this chapter shall be subject to the provisions of Section 20.38.060 (Nonconforming Parking). (Ord. 2010-21 § 1 (Exh. A)(part), 2010)

20.40.040 Off-Street Parking Spaces Required.

Off-street parking spaces shall be provided in compliance with Table 3.10. These standards shall be considered the minimum required to preserve the public health, safety, and welfare, and more extensive parking provisions may be required by the review authority in particular circumstances. Unless otherwise noted parking requirements are calculated based on gross floor area.

TABLE 3-10
OFF-STREET PARKING REQUIREMENTS

Land Use	Parking Spaces Required
Industry, Manufacturing and Processing, Warehousing Uses	
Food Processing	1 per 2,000 sq. ft.
Handicraft Industry	1 per 500 sq. ft.
Industry	
Small—5,000 sq. ft. or less	1 per 500 sq. ft.
Large—Over 5,000 sq. ft.	1 per 1,000 sq. ft.
Industry, Marine-Related	1 per 750 sq. ft.
Personal Storage (Mini Storage)	2 for resident manager, plus additional for office as required by minor use permit
Research and Development	1 per 500 sq. ft.
Warehousing and Storage	1 per 2,000 sq. ft., plus one per 350 sq. ft. for offices. Minimum of 10 spaces per use
Wholesaling	1 per 1,000 sq. ft.
Recreation, Education, and Public Assembly Uses	
Assembly/Meeting Facilities	1 per 3 seats or one per 35 sq. ft. used for assembly purposes
Commercial Recreation and Entertainment	As required by conditional use permit
Cultural Institutions	1 per 300 sq. ft.
Schools, Public and Private	As required by conditional/minor use permit
Residential Uses	
Accessory Dwelling Units	1 per unit; a minimum of 2 covered per site.
Single-Unit Dwellings—Attached	2 per unit in a garage
Single-Unit Dwellings—Detached and less than 4,000 sq. ft. of habitable floor area	2 per unit in a garage
Single-Unit Dwellings—Detached and 4,000 sq. ft. or greater of floor area	3 per unit in a garage
Single-Unit Dwellings—Balboa Island	2 per unit in a garage
Multi-Unit Dwellings—3 units	2 per unit covered, plus guest parking;

Land Use	Parking Spaces Required
	1—2 units, no guest parking required
	3 units, 1 guest parking space
Multi-Unit Dwellings—4 units or more	2 per unit covered, plus 0.5 space per unit for guest parking
Two-Unit Dwellings	2 per unit; 1 in a garage and 1 covered or in a garage
Live/Work Units	2 per unit in a garage, plus 2 for guest/customer parking
Senior Housing—Market rate	1.2 per unit
Senior Housing—Affordable	1 per unit
Retail Trade Uses	
Appliances, Building Materials, Home Electronics, Furniture, Nurseries, and Similar Large Warehouse-type Retail Sales and Bulk Merchandise Facilities	1st 10,000 sq. ft.—1 space per 300 sq. ft. Over 10,000 sq. ft.—1 space per 500 sq. ft. Plus 1 per 1,000 sq. ft. of outdoor merchandise areas
Food and Beverage Sales	1 per 200 sq. ft.
Marine Rentals and Sales	
Boat Rentals and Sales	1 per 1,000 sq. ft. of lot area, plus 1 per 350 sq. ft. of office area
Marine Retail Sales	1 per 250 sq. ft.
Retail Sales	1 per 250 sq. ft.
Shopping Centers	1 per 200 sq. ft. See Section <u>20.40.050</u>
Service Uses—Business, Financial, Medical, and Professional	
Convalescent Facilities	1 per 3 beds or as required by conditional use permit
Emergency Health Facilities	1 per 200 sq. ft.
Financial Institutions and Related Services	1 per 250 sq. ft.
Hospitals	1 per bed; plus 1 per resident doctor and 1 per employee.
Offices*—Business, Corporate, General, Governmental First 50,000 sq. ft. Next 75,000 sq. ft. Floor area above 125,001 sq. ft. * Not more than 20% medical office uses.	1 per 250 sq. ft. net floor area 1 per 300 sq. ft. net floor area 1 per 350 sq. ft. net floor area
Offices—Medical and Dental Offices	1 per 200 sq. ft.
Outpatient Surgery Facility	1 per 250 sq. ft.

Land Use	Parking Spaces Required
Service Uses—General	
Adult-Oriented Businesses	1 per 1.5 occupants or as required by conditional use permit
Ambulance Services	1 per 500 sq. ft.; plus 2 storage spaces.
Animal Sales and Services	
Animal Boarding/Kennels	1 per 400 sq. ft.
Animal Grooming	1 per 400 sq. ft.
Animal Hospitals/Clinics	1 per 400 sq. ft.
Animal Retail Sales	1 per 250 sq. ft.
Artists' Studios	1 per 1,000 sq. ft.
Catering Services	1 per 400 sq. ft.
Care Uses	
Adult Day Care—Small (6 or fewer)	Spaces required for dwelling unit only
Adult Day Care—Large (7 or more)	2 per site for drop-off and pick-up purposes (in addition to the spaces required for the dwelling unit)
Child Day Care—Small (6 or fewer)	Spaces required for dwelling unit only
Child Day Care—Large (9 to 14)	2 per site for drop-off and pick-up purposes (in addition to the spaces required for the dwelling unit)
Day Care—General	1 per 7 occupants based on maximum occupancy allowed per license
Residential Care—General (7 to 14)	1 per 3 beds
Eating and Drinking Establishments	
Accessory (open to public)	1 per each 3 seats or 1 per each 75 sq. ft. of net public area, whichever is greater
Bars, Lounges, and Nightclubs	1 per each 4 persons based on allowed occupancy load or as required by conditional use permit
Food Service with/without alcohol, with/without late hours	1 per 30—50 sq. ft. of net public area, including outdoor dining areas, but excluding the first 25% or 1,000 sq. ft. of outdoor dining area, whichever is less. See Section <u>20.40.060</u>
Food Service—Fast food	1 per 50 sq. ft., and 1 per 100 sq. ft. for outdoor dining areas
Take-Out Service—Limited	1 per 250 sq. ft.

Land Use	Parking Spaces Required
Emergency Shelter	1 per 4 beds plus 1 per staff; and if shelter is designed with designated family units then 0.5 parking space per bedroom designated for family units
Funeral Homes and Mortuaries	1 per 35 sq. ft. of assembly area
Health/Fitness Facilities	
Small—2,000 sq. ft. or less	1 per 250 sq. ft.
Large—Over 2,000 sq. ft.	1 per 200 sq. ft.
Laboratories (medical, dental, and similar)	1 per 500 sq. ft.
Maintenance and Repair Services	1 per 500 sq. ft.
Marine Services	
Boat Storage—Dry	0.33 per storage space or as required by conditional use permit
Boat Yards	As required by conditional use permit
Dry Docks	2 per dry dock
Entertainment and Excursion Services	1 per each 3 passengers and crew members
Marine Service Stations	As required by conditional use permit
Sport Fishing Charters	1 per each 2 passengers and crew members
Water Transportation Services—Office	1 per 100 sq. ft., minimum 2 spaces
Personal Services	
Massage Establishments	1 per 200 sq. ft. or as required by conditional use permit
Nail Salons	1 per 80 sq. ft.
Personal Services, General	1 per 250 sq. ft.
Studio (dance, music, and similar)	1 per 250 sq. ft.
Postal Services	1 per 250 sq. ft.
Printing and Duplicating Services	1 per 250 sq. ft.
Recycling Facilities	
Collection Facility—Large	4 spaces minimum, but more may be required by the review authority
Collection Facility—Small	As required by the review authority
Visitor Accommodations	
Bed and Breakfast Inns	1 per guest room, plus 2 spaces
Hotels and accessory uses	As required by conditional use permit

Land Use	Parking Spaces Required
Motels	1 per guest room or unit
Recreational Vehicle Parks	As required by conditional use permit
Time Shares	As required by conditional use permit
Transportation, Communications, and Infrastructure Uses	
Communication Facilities	1 per 500 sq. ft.
Heliports and Helistops	As required by conditional use permit
Marinas	0.75 per slip or 0.75 per 25 feet of mooring space
Vehicle Rental, Sale, and Service Uses	
Vehicle/Equipment Rentals	
Office Only	1 per 250 sq. ft.
Limited	1 per 300 sq. ft., plus 1 per rental vehicle (not including bicycles and similar vehicles)
Vehicle/Equipment Rentals and Sales	1 per 1,000 sq. ft. of lot area
Vehicles for Hire	1 per 300 sq. ft., plus 1 per each vehicle associated with the use and stored on the same site
Vehicle Sales, Office Only	1 per 250 sq. ft., plus 1 as required by DMV
Vehicle/Equipment Repair (General and Limited)	1 per 300 sq. ft. or 5 per service bay, whichever is more
Vehicle/Equipment Services	
Automobile Washing	1 per 200 sq. ft. of office or lounge area; plus queue for 5 cars per washing station
Service Station	1 per 300 sq. ft. or 5 per service bay, whichever is more; minimum of 4
Service Station with Convenience Market	1 per 200 sq. ft., in addition to 5 per service bay
Vehicle Storage	1 per 500 sq. ft.
Other Uses	
Caretaker Residence	1 per unit
Special Events	As required by Chapter <u>11.03</u>
Temporary Uses	As required by the limited term permit in compliance with Section <u>20.52.040</u>

(Ord. 2013-4 § 3, 2013; Ord. 2010-21 § 1 (Exh. A)(part), 2010)

20.40.050 Parking Requirements for Shopping Centers.

A. An off-street parking space requirement of one space for each two hundred (200) square feet of gross floor area may be used for shopping centers meeting the following criteria:

1. The gross floor area of the shopping center does not exceed 100,000 square feet; and
2. The gross floor area of all eating and drinking establishments does not exceed fifteen (15) percent of the gross floor area of the shopping center.

B. Individual tenants with a gross floor area of ten thousand (10,000) square feet or more shall meet the parking space requirement for the applicable use in compliance with Section 20.40.040 (Off-Street Parking Spaces Required).

C. Shopping centers with gross floor areas in excess of 100,000 square feet or with eating and drinking establishments occupying more than fifteen (15) percent of the gross floor area of the center shall use a parking requirement equal to the sum of the requirements prescribed for each use in the shopping center. (Ord. 2010-21 § 1 (Exh. A)(part), 2010)

20.40.060 Parking Requirements for Food Service Uses.

A. Establishment of Parking Requirement. The applicable review authority shall establish the off-street parking requirement for food service uses within a range of one space for each thirty (30) to fifty (50) square feet of net public area based upon the following considerations:

1. Physical Design Characteristics.
 - a. The gross floor area of the building or tenant space;
 - b. The number of tables or seats and their arrangement;
 - c. Other areas that should logically be excluded from the determination of net public area;
 - d. The parking lot design, including the use of small car spaces, tandem and valet parking and loading areas;
 - e. Availability of guest dock space for boats; and
 - f. Extent of outdoor dining.
2. Operational Characteristics.
 - a. The amount of floor area devoted to live entertainment or dancing;
 - b. The amount of floor area devoted to the sale of alcoholic beverages;
 - c. The presence of pool tables, big screen televisions or other attractions;
 - d. The hours of operation; and
 - e. The expected turnover rate.
3. Location of the Establishment.
 - a. In relation to other uses and the waterfront;

- b. Availability of off-site parking nearby;
- c. Amount of walk-in trade; and
- d. Parking problems in the area at times of peak demand.

B. Conditions of Approval. If during the review of the application, the review authority uses any of the preceding considerations as a basis for establishing the parking requirement, the substance of the considerations shall become conditions of the permit application approval and a change to any of the conditions will require an amendment to the permit application, which may be amended to establish parking requirements within the range as noted above. (Ord. 2010-21 § 1 (Exh. A)(part), 2010)

20.40.070 Development Standards for Parking Areas.

A. Access to Parking Areas. Access to off-street parking areas shall be provided in the following manner:

1. Nonresidential and Multi-Unit. Parking areas for nonresidential and multi-unit uses:
 - a. Adequate and safe maneuvering aisles shall be provided within each parking area so that vehicles enter an abutting street or alley in a forward direction.
 - b. The Director may approve exceptions to the above requirement for parking spaces immediately adjoining a public alley, provided not more than ten (10) feet of the alley right-of-way is used to accommodate the required aisle width, and provided the spaces are set back from the alley the required minimum distances shown in Table 3-11.

TABLE 3-11

PARKING SETBACK FROM ALLEY

Alley Width	Minimum Setback
15'0" or less	5'0"
15'1" to 19'11"	3'9"
20'0" or more	2'6"

- c. The first parking space within a parking area accessed from a public street shall be set back a minimum of five feet from the property line.
 2. Access Ramps. Ramps providing vehicle access to parking areas shall not exceed a slope of fifteen (15) percent. Changes in the slope of a ramp shall not exceed eleven (11) percent and may occur at five-foot intervals. Refer to Public Works Standard 160L-B, C and 805L-B. The Director of Public Works may modify these standards to accommodate specific site conditions.
- B. Location of Parking Facilities.
1. Residential Uses. Parking facilities serving residential uses shall be located on the same site as the use the parking is intended to serve. Additional requirements are provided in Section 20.40.090 (Parking Standards for Residential Uses).

To: ZONING ADMINISTRATOR
Subject: Additional Materials Received

Item No. 5b: Additional Materials Received
Zoning Administrator April 11, 2013
Eat Chow Outdoor Dining Permit (PA2013-034)

From: Don Niebuhr [<mailto:dwnbuilder@gmail.com>]
Sent: Sunday, April 07, 2013 11:17 AM
To: Zdeba, Benjamin
Subject: Eat Chow impact in Newport Shores

I am opposed to new changes that are being proposed regarding this restaurant. Im not sure but I think they are already not keeping up with the restrictions that were set up when they first got their permits. Can we have the city code/permit enforcement people look into this before adding or deleting anything to the impact of the conditions already in place.

Sin. Don Niebuhr
dwnbuilder@gmail.com
235 62nd st

April 9, 2013

Mr. Matt Cosylion, Code Enforcement Supervisor
Ms. Brenda Wisneski, Zoning Administrator
City of Newport Beach
100 Civic Center Drive
Newport Beach, Ca.

Subject: Notice of Violation UP2010-027 and comments on proposed UP1013-005

Attn: Mr. Benjamin Zdeba, Assistant Planner

Dear Mr. Zdeba,

I am a resident of Newport Beach. I have resided continuously in Newport Shores since 1974. I have the following comments on current operations of Eat Chow Restaurant and proposed UP2013-005.

I want to make the City aware that the business subject to Use Permit 2010-027 (Eat Chow Restaurant) is operating in violation of its Use Permit (UP2010-027), and in addition, is illegally operating a pay valet parking business utilizing public streets (details are provided herein). I expect the City to take immediate enforcement actions.

Thank you for the notice of Public Hearing for Project File No. PA 2013-005. Due to the limited nature of the public notice, few Newport Shores residents that have been contacted are aware of this proposal. Below are my comments on proposed Minor Use Permit 2013-005. These concerns are shared by my neighbors.

Eat Chow is a fine restaurant. However, circumstances have changed since its approval in 2010. Assumptions used to justify the initial Use Permit have been invalidated. As a result, parking in the adjacent residential areas has been adversely impacted. For nearby residents, there are few if any on-street parking spaces available for residents and our guests during peak restaurant use periods. The reckless nature of the restaurant's illegal valet parking service has created a safety risk to the public.

Below I address UP2010-027 (PA2010-136) and identifying changes in circumstances and Use Permit violations which require enforcement action pursuant to the Municipal Code and Use Permit Conditions of Approval, followed by comments on proposed UP2013-005; and concluding with a Summary and Recommended Actions.

Existing UP2010-027

The applicant represented in the 2010 Use Permit application (reference 9-27-10 Project description and justification for Directors Use Permit): ***“5. Seating & Parking. In addition to required parking on-site, we will have full use of Spaghetti Bender's parking lot from 7am-4:30pm during the bulk of our most busy time and therefore will have more actual parking than we will realistically need. We can provide you with confirmation of this from Spaghetti Bender's property owner. We have spoken to Ethan Wayne who owns the adjacent building and parking lot about allowing us to use his empty lot after 5pm. In closing, this project will not only benefit Newport Shores, by offering new services, and our business, by increasing revenue, but it will also benefit the City, by generating new revenue and keeping the demand for traffic counts low.”***

Based on this representation the City evaluated the proposed project and made the required Findings of approval. Based on current operating characteristics and changed circumstances, the following Findings are no longer valid.

Finding No 3 (3rd bullet): ***“...this Use Permit will be conditioned to maintain the requirements of Section 20.48.090.”*** This quote states that the permitted use is conditional and must comply with the standards contained in Municipal Code Section 20.48.090 for eating and drinking establishments. The use (Eat Chow Restaurant) is not in compliance with the standards set for in Section 20.48.090. My comments below will provide specific violations.

Finding No 5: ***“The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g. fire and medical) access and public services and utilities.”***

The City justification for this Finding included the following language ***“...The existing building and parking lot have functioned satisfactorily with the current configuration....”*** This is not true. The entire building was vacant at the time of this application. Over the years numerous businesses have attempted to operate and failed. In my opinion, being in the land development business since 1974, and a nearby resident since 1976, they failed because of a lack of sufficient on-site parking spaces, inadequate parking design and lack of adequate space for delivery vehicles. The result of these inadequacies combined with a change in the operation of the business, (from a business that was represented to have its peak use period from ***“7am to 4:30pm”*** to a business whose peak use period is nighttime) have resulted in the elimination of parking for nearby residents and their guests during peak use periods. Obviously, the site is not physically suitable for a use that requires over 8 parking spaces (hence the need for valet parking during peak use periods), and frequent deliveries.

Finding No 6: ***“Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.”***

The Project Description identified the use as a coffee shop/restaurant. The Applicant, Eat Chow **Café** operates a similar facility in Costa Mesa. The appropriate parking ratio was determined by the City to be 1 space per 50 sq feet of public space requiring a total of 12 spaces (As friendly to business as the Municipal Code allows). The City determined the subject property to be nonconforming pursuant to Section 20.38.060 due to deficient off-street parking; and that the nonconforming status is not intensified by the proposed use (note: the calculation for this

determination is not provided in the Staff Report). I requested this (public) information from Staff twice, it has not been provided.

I do not believe the rationale leading to this conclusion was appropriate in 2010 nor is it appropriate now. I acknowledge that UP2010-027 has been approved the appeal period has long since past. However, there have been changes to the Project Description, on-going violations of the Use Permit Conditions of Approval and changes in circumstances since approval of UP2010-027. These factors require a reanalysis of the Project. Factors that should be considered include:

Standard Condition 48 (see UP2010-027) states: ***“This approval was based on the particulars of the individual case and does not in and of itself or in combination with other approvals in the vicinity or Citywide constitute a precedent for future approvals or decisions.”***

Municipal Code Section 20.50.10 B & C instructs Staff to:

“B. Encourage nonconforming uses and structures to become more conforming over time.

C. Reduce the number of nonconforming uses by prohibiting their reestablishment after Abandonment”

Municipal Code Section 20.12.020 D (1) Conflicting Requirements states: ***“Zoning Code and Other Municipal Code Provisions. If conflicts occur between requirements of this Zoning Code, or between this Zoning Code and other provisions of the Newport Beach Municipal Code, or other adopted regulations of the City, the more restrictive provision shall prevail.”***

Restaurant uses at this location have been nonconforming pursuant to Section 20.38.060 due to deficient off-street parking for many years. The current use continues to be nonconforming due to inadequate off-street parking and inadequate room for access by delivery vehicles. The Municipal Code is clear ***“If conflicts occur between requirements of this Zoning Code, or between this Zoning Code and other provisions of the Newport Beach Municipal Code, or other adopted regulations of the City, the more restrictive provision shall prevail”***. The City should implement Section 20.50.10(B & C) and encouraging nonconforming uses to become more conforming over time or prohibit their reestablishment. The City should require compliance with Municipal Code Section 20.52.110 Off Street Loading Requirements. Clearly parking for any restaurant at this location will have nonconforming parking. If the proposed use relies on off-site public spaces within the adjacent residential zone, the project should be subject to Municipal Code Section 20.52.60 “Parking for Nonresidential Uses in Residential Zoning Districts”.

It is improper for the City to rely upon the prior Use Permit’s nonconforming status as a ***“precedent for future approvals or decisions”*** and ignore the conflicting requirements of the Municipal Code which are more restrictive per Section 20.12.020 D (1).

Conditions have changed. Peak periods for the approved use are not daytime, as represented in the 2010 Use Permit application (reference 9-27-10 Project description and justification for Directors Use Permit: ***“...we will have full use of Spaghetti Bender's parking lot from 7am-4:30pm during the bulk of our most busy time and therefore will have more actual parking than we will realistically need”***). Peak periods are nighttime and to a lesser extent weekend mornings.

During peak use periods, the space is being used primarily as a restaurant, not a coffee shop. The majority of customers drive vehicles to the restaurant particularly during the peak use periods (evenings). The appropriate parking ratio for the Eat Chow restaurant and coffee shop having the bulk of business occurring from 7:00 am to 4:30pm is 1 space per 30 sq feet of public space (not 1 space per 50 sq. ft.), requiring a total of 20 spaces. Due to the restaurant's change in "*our most busy time*" from daytime to evenings, the City must re-examine the parking requirement to determine if the subject property qualifies as nonconforming pursuant to Section 20.38.060 due to deficient off-street parking; and if the nonconforming status is intensified by the proposed use. In addition, the City must determine if Section 20.38.060 is applicable given the conflict with Section 20.50.10(B & C) following the procedure mandated by Section 20.12.020 D (1) to resolve conflicts in the Municipal Code. In addition, the City must determine if it is feasible to safely have delivery vehicles access the property given the limited space available and inconsistency with Section 20.52.110.



Entrance to Eat Chow

Photo Date: April 6, 2013, 6:20 pm

A delivery vehicle (see photo of delivery truck below) cannot safely access the space available in the above photo. Even if a delivery truck could fit in, there is limited sight visibility for trucks backing out and a delivery truck would block access to the remaining commercial space in the building (presumably the address is # 213B).

Finding 6 (3rd bullet) ***“The restrictions on seating and net public area prevent adverse traffic impacts for the surrounding residential and commercial uses and patrons who are nearby residents or visitors to the area will likely walk or ride a bicycle to the restaurant. Bus stops are also located in the vicinity.”***

Peak use periods are nighttime and to a lesser extent weekend mornings. The majority of visitors to this area are beach-goers. Beach-goers generally leave Newport in the afternoon. The assumption that ***“visitors to the area will likely walk or ride a bicycle to the restaurant”*** has not turned out to be true during peak use periods. Nor is the assumption correct that bus users will prevent adverse traffic impacts during peak use periods or that significant numbers of customers will park in the meter parking spaces located across Pacific Coast Highway and walk to the restaurant during peak use periods, (see statement in Finding 3). The Applicant represented that spaces would be available after 5pm at the lot across the street owned by Ethan Wayne. This parking is no longer available. The overwhelming majority of Eat Chow customers now park on the public streets in the adjacent residential area. The Finding that ***“the restrictions on seating and net public area prevent adverse traffic impacts for the surrounding residential and commercial uses...”*** is invalid. At minimum a Parking Management Plan and compliance with Section 20.52.60 is warranted.

Conclusion

The representations in the by the Project Applicant in his 9-27-10 Project description and justification for Directors Use Permit letter, combined with the commitment to have all employees park off public streets or far away from the Café on public streets, convinced nearby residents that their concerns over the lack of adequate on-site parking and their fear that Eat Chow Café’s customers would park on public streets within the adjacent residential area had been adequately addressed.

The change in the operating characteristics of the business, from a Café represented to have its peak use period from ***“7am to 4:30pm”*** to a Restaurant whose peak use period is nighttime have resulted in the elimination of parking for nearby residents and their guests during peak use periods.

The use of the Spaghetti Bender parking lot is not available to Eat Chow in the evenings. The parking shortage is so severe, that the Spaghetti Bender has placed a sign and at times an attendant to discourage Eat Chow customers from parking in their lot.

The use of the parking lot for the adjacent building owned by Ethan Wayne while initially available is no longer available at any time.

These changes in circumstances combined with the popularity of the restaurant have reduced the availability of parking in the residential area adjacent to the restaurant. The effects are most significant in the evening hours when the Spaghetti Bender and Eat Chow are at their busiest. As a nearby resident, there are now few if any on-street parking spaces available for residents or our guests during peak restaurant periods.

These changes in circumstances contradict the Applicant's 9-27-2010 Project Description and Justification for Directors Use Permit (UP2010-0027) and invalidate a number of the Findings of approval. Therefore, the City must reevaluate the current use for conformance with UP2010-027 and its findings justifying its approval.

The City's role is clear, the City should implement Section 20.50.10(B & C) and encouraging nonconforming uses to become more conforming over time or prohibit their reestablishment. It is improper for the City to rely upon the prior Use Permit as a "***precedent for future approvals or decisions***". At minimum a Parking Management Plan and compliance with Section 20.52.60 is warranted.

The burden lies with the Applicant to remedy the parking impacts and Use Permit violations created by the use. If the Applicant is unable or willing to do so, the City is required to take appropriate enforcement actions including revocation of Use Permit 2010-027.

Observed Violations (UP2010-027)

Condition No. 36:

“The use of the facilities rear door for deliveries shall be prohibited”.

Delivery trucks regularly illegally park on Newport Shores Drive (red curb) adjacent to the rear door and make deliveries through the rear door. This was the operators plan all along (reference 9-27-10 Project description and justification for Directors Use Permit: ***“The only time a residential neighbor will see our operations will be during small deliveries to the rear door”***). The operator has ignored this Condition of Approval!

“The rear doors of the facility shall remain closed at all times”

This door has been observed open multiple times during the day and night.



Delivery through rear door
Photo Date: April 5, 2013 1:30 pm



Delivery through rear door
Photo Date: April 5, 2013 1:30 pm



Rear door open - nighttime
Photo Date: April 2, 2013 9:30 pm



Rear door open - daytime
Photo Date: April 3, 2013, 10:00 am



Rear door open – daytime
Photo Date: April 4, 2013, 12:00 am



62nd St at Newport Shores Drive
Lack of available parking spaces
Photo Date: April 4, 2013, 7:00 pm



Rear (Kitchen) door open – evening
Note: staining on sidewalk
Photo Date: April 6, 2013, 6:20 pm



62nd St at Newport Shores Drive
Lack of available parking spaces
Photo Date: April 6, 2013, 6:20 pm



Rear Door Open – Note: staining on sidewalk. Why? The building's other rear door has no staining.
Photo Date: April 4, 2013, 6:00 PM



Photo Date: April 6, 2013, 6:20 pm

Note: The parking problem - Eat Chow valet sign and “Spaghetti Bender Parking Only” sign



Photo Date: April 6, 2013, 6:20 pm

Condition No. 37:

“All deliveries shall be conducted on-site through the front entrance”

Deliveries are conducted off-site either through trucks illegally parking on Newport Shores Drive (adjacent to the red curb) adjacent to the rear of the facility, or trucks park off-site in the adjacent Spaghetti Bender parking lot and utilize the front entrance. Deliveries occur in this manner because there is no room for delivery trucks if cars occupy the available on-site parking area. The Applicant had no intention of complying with this condition as indicated in the Applicants 9-27-10 Project description and justification for Directors Use Permit letter.

Other

- During the consideration of UP2010-027 in 2010, the Applicant committed to the residents to have employee's park their vehicles away from the restaurant to reduce the impact on adjacent residential areas. This is not occurring. Employees park at the closest available space to the restaurant.
- Eat Chow's valet services charges \$3.00 to park its customer's cars off-site on public streets in the adjacent residential area. To provide prompt service, the valet park at the closest available space to the restaurant. This further exacerbates the parking shortage in the residential area adjacent to Eat Chow. The valet is needed because there is a parking shortage on-site and in the project vicinity. The valet has been observed racing to any available parking space. This is extremely dangerous in a residential neighborhood with young children and the elderly and represents a clear risk to public safety. This illegal activity **constitutes a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use**”.

Eat Chow illegally operates a valet parking service (\$3.00 charge/car) to park its customer's vehicles on public streets. Eat Chow has no approved Conditional Use Permit or Parking Management Plan permitting it to do so. Use of public streets for commercial purposes is a violation of Municipal Code Section 10.08.030 “Use of Streets and Sidewalks for Commercial Purposes”.

- As noted in the prior photos, there is staining on the sidewalk adjacent to the rear door to the kitchen of Eat Chow. Please ask the operator for an explanation. The staining cannot be from deliveries because that is prohibited. Therefore, it must be from employees entering and exiting the business. Surprisingly, there is no staining on the sidewalk at the main entrance where customers enter and deliveries are conditioned to occur. We value our environment and do not want kitchen waste, cleaning fluids and/or detergents polluting the harbor!
- EAT Chow was cited by the City for having outdoor dining without a permit. Prior to the issuance of the citation, Eat Chow was warned by the City and ignored the warning resulting in the citation.

Proposed UP2013-005

Comments on RESOLUTION ZA2013-DRAFT

Scope of Analysis: The language in proposed UP2013-005 states “*this approval shall supersede any previous use permit at this location*”. Therefore UP 2013-05 if approved will supersede the existing Use Permit UP2010-027. I interpret this to mean that the proposed Use Permit addresses the whole of the property, is not an addendum to the previous UP2010-027, or in addition to UP2010-0027. Therefore, the whole of the property/use must be analyzed as part of proposed UP2013-005, not just the proposed outdoor dining request.

Section 2 CEQA Determination # 1 & 2:

The Class I CEQA exemption applies to the “*ongoing use of existing buildings where there is negligible or no expansion of use.*”

Staff determined that the proposed Use Permit will have a negligible expansion of use. No justification or explanation for how this determination was made is provided. The Project represents an 11.5% increase in the number of restaurant seats. I do not consider an 11.5% expansion of use negligible.

- What is the definition of “negligible expansion of use”?
- Has this definition been codified and applied uniformly throughout the City, or is this an arbitrary definition developed for this Project?
- What is the CEQA threshold of significance for expansion of use?

The CEQA Class 1 exemption does not distinguish between large and small buildings or the type of use as does the draft Resolution. Certainly, an 11.5% percent expansion of the Balboa Bay Club, Fashion Island or Newport Coast would not qualify for a Class 1 exemption. The proposed Project does not qualify for a CEQA Class 1 exemption.

Section 3 - Required Findings

The proposed “Findings” and “Facts in support findings” contained in proposed UP2013-005 have modified from those contained in approved UP2010-027. Facts in support of findings contained in proposed UP2013-005 must be consistent with those in proposed UP2013-05. The only requested change in the Project is for 4 outdoor seats. One example, the proposed “Findings” do not include the following “Facts in support of findings” contained in UP2010-027:

UP 2010-027 Finding 6 – Facts in support of finding

“The conditions imposed on the use will reduce any possible detriment to the community by ensuring continued consistency with the intent and purpose of the Municipal Code.

The restrictions on seating and net public area prevent adverse traffic impacts for the surrounding residential and commercial uses, and patrons who are nearby residents or visitors to the area will likely walk or ride a bicycle to the restaurant. Bus stops are also located in the vicinity.”

Why has the City omitted and or modified pertinent “Facts in support of findings” contained in UP2010-027?

One example of the significance of these facts is the granting of UP2013-005 will allow an 11.5% increase in seating capacity. This increase in use will by definition, increase the parking problems during peak use periods which contradicts the prior Finding that: ***“the restrictions on seating and net public area prevent adverse traffic impacts for the surrounding residential and commercial uses...”***

By eliminating and or modifying 23 Conditions of Approval contained in UP2010-027, the Facts in support of findings that ***“The conditions imposed on the use will reduce any possible detriment to the community by ensuring continued consistency with the intent and purpose of the Municipal Code”*** this whole concern has been improperly removed from proposed UP2013-005.

Finding (B): ***“The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.”***

Finding B (3): The existing use is currently in non-compliance with existing Conditions of Approval (see above). Therefore, this Finding cannot be made.

The burden lies with the Applicant to remedy the parking impacts and Use Permit violations created by the use. If the Applicant is unable or willing to do so, the City is required to take appropriate enforcement actions including revocation of Use Permit 2010-027. Any new and/or modified Conditions of Approval should demonstrate compliance with Municipal Code Sections 20.48.090 and 20.40.060 (B).

Finding (C): ***“The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.”***

Finding C (1): Because this business is operating in violation of UP2010-027 Conditions of Approval; is operating an illegal off-site valet parking business on public streets; is operating under different operating characteristics (peak use period has changed from daytime to nighttime); and its design will not allow required on-site deliveries this Finding cannot be made. Furthermore, the Project is by definition an 11.5% expansion of the existing use. This expansion will adversely impact parking in the adjacent residential area. **The operating characteristics of this use are not compatible with the residential uses in the vicinity.**

Finding (D): ***“The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.”***

Finding D (1): The existing building and parking lot **have not** functioned satisfactorily with the current configuration. There is no room for on-site deliveries when cars are in the parking area. Consequently, delivery trucks park illegally on Newport Shores Drive and access the building through the rear access door, a violation of UP2010-027 Condition of Approval 36, or use the Spaghetti Bender parking lot for deliveries in violation of Condition of Approval 37. The operating characteristics are adversely impacts residential parking in the adjacent residential area. **The site is not physically suitable in terms of design, location, shape, size, operating characteristic for the existing use.**

Finding (E): *“Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, a safety, or general welfare of persons residing or working in the neighborhood of the proposed use.”*

Finding E (1): The “Project” has not been reviewed. The City’s acknowledges that it has not reviewed the existing Use Permit (UP2010-027) or considered the ongoing violations as part of its review. Condition No. 2 states: *“this approval shall supersede any previous use permit at this location”*. Therefore, the whole of the project must be evaluated. While the whole of the project is not evaluated, proposed Conditions of Approval apply to the whole of the property, not just the outdoor dining area. Why? Alarming the proposed Conditions of Approval reduce the City’s control over the property and its use, and allow the Applicant greater flexibility. These changes to existing UP 2010-027 Conditions of Approval were neither requested by this Use Permit Application nor included in the public notice issued by the City for UP2013-005. These changes in Conditions of Approval among other opportunities provide the operator the potential to increased business during peak hours which will further adversely impact the availability of public parking in the adjacent residential area.

The facts presented herein are not considered by Staff in their preparation of this draft Resolution. The draft Resolution and its attachments do not include any **“conditions to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible”**; do not implement Municipal Code Section 20.50.10. (B & C) let alone any conditions to remedy existing Use Permit violations or illegal activities. Staff has not following Municipal Code Section 20.12.020 D (1) to resolve conflicts.

The operator, while required to take reasonable steps to discourage and correct objectionable conditions, has not taken such steps. In fact, the operator has done the opposite by changing his business to a predominately nighttime business, promoting change through establishing an illegal valet parking service and illegally attempting to promote outdoor dining, for which the operator was cited.

Exhibit A – Conditions of Approval – Draft

Condition

2. Since *“this approval shall supersede any previous use permit at this location”*, please explain why 23 Conditions of Approval contained in UP2010-0027 have not been carried forward in proposed UP2013-005, or have reduced requirements (specifically, Conditions: 1, 3, 4, 7, 8, 9, 11, 12, 13, 14, 19, 31, 35, 38, 40, 41, 42, 43, 45, 47, 48, 49 and 51 of UP2010-027).

Removal or modification of Conditions of Approval were not requested in the Use Permit Application and were not noticed to the public. Elimination and or Modification of proposed Conditions of Approval to reduce requirements of prior Conditions of Approval are improper.

In addition, please address the following specific questions:

Condition 1 – Why was the following language deleted from proposed Condition 1?
“....stamped and dated with the date of this approval (Except as modified by applicable conditions of approval.)”

Condition 3 – Why remove the counter height limitation? Is this not to insure handicapped compliance in the future?

Condition 7 - Why remove the requirement: ***“The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.”***?

Will the proposed outdoor seating area meet all applicable Federal and State Disabilities Access requirements? This is not addressed in the Staff Report, Draft Resolution or Draft Conditions of Approval.

Condition 8 - Why remove the requirement: ***“Cleanout shall comply with Public Works Standard-406-L regarding sewer lateral cleanouts.”***?

Condition 19 - Why remove the requirement: ***“There shall be no reduced price alcoholic beverage promotion after 9 p.m.”***? By eliminating this restriction the operator will be able to provide promotions which have the potential to increase patronage. Increased patronage will further adversely impact the availability of parking in the adjacent residential area during peak use periods.

Condition 51 - Why remove this Condition? Condition 51 is not the same as proposed Condition 8 of UP-2013-005. Condition 51 cites ***“Chapter 20.48 of the Municipal Code”*** and include ***“and/or Planning Commission”*** which proposed Condition 8 omits.

9. The review of UP20013-005 application should consider operator compliance with UP2010-027. The change in circumstances since approval of UP2010-027 in operational characteristics, proposed expansion in the number of seats, existing Use Permit violations and language contained in the existing use permit require the processing of a new Use Permit.
19. Condition 19 should be revised to address deliveries which involve trucks parking illegally on Newport Shores Drive and accessing the restaurant through the rear access door, or use the (off-site) Spaghetti Bender parking lot for deliveries. The burden lies with the Applicant to remedy the parking impacts and Use Permit violations created by the use. If the Applicant is unable or willing to do so, the City is required to take appropriate enforcement actions including revocation of Use Permit 2010-027.
20. Appropriate enforcement actions should be taken and new Condition(s) of Approval imposed to insure compliance with Use Permit 2010-027 conditions 36 and 37 and ultimately UP2013-005.

Summary and Recommended Actions

Summary

Eat Chow is a fine restaurant. However, circumstances have changed since its approval in 2010. Applicant representations allowed the City to reach required Findings in support of UP2010-027 have not occurred. Assumptions used by the City to justify the initial Use Permit have been invalidated. As a result, parking in the adjacent residential areas has been adversely impacted. For nearby residents, there are few if any on-street parking spaces available for us and our guests during peak restaurant use periods.

Eat Chow has not turned out to be the type of use it was represented to be. Eat Chow Café is a operating as a Restaurant not a café in violation of Conditions of its Use Permit, and operating an illegal valet parking business using public streets. Therefore, the existing use is inconsistent with the required Findings for Use Permit2010-027 and the City is required by Conditions 51 to take enforcement action.

Condition 2 of UP2013-005 states that: “***this approval shall supersede any previous use permit at this location***”. This requires the City to look at the whole of the Project. Given the adverse impact this restaurant is having on the adjacent residential area, the scope of analysis is that of a new Use Permit including a new parking analysis is required for proposed Use Permit 2013-005.

The City needs to clarify its rational for claiming a CEQA, Class 1 exemption, particularly in light of the 11.5% expansion of use and evaluate the whole of the Project.

The City needs to justify why it is relinquishing control over this use and providing additional flexibility to the Applicant through elimination and modification of 23 previously adopted Conditions of Approval for UP2010-027. Changes to the existing Use Permit Conditions of Approval are not requested by PA2013-005, nor are they identified in the public notice. As proposed, changes to existing Use Permit/Conditions of Approval are improper and illegal.

Eat Chow Café committed to be “***an excellent neighbor, well aware of its responsibility to the residents...and attentive to the needs of the neighborhood***” and told the City and residents it “***will have more actual parking than we will realistically need***” when it applied for the Use Permit in 2010. Far from that, Eat Chow the restaurant is knowingly operating in violation of Conditions of its Use Permit. Eat Chow knowingly violated outdoor dining regulations and was cited by the City. Eat Chow knows it has a parking deficiency and has implemented an illegal off-site valet parking service on public streets without first obtaining a Conditional Use Permit or approval of a Parking Management Plan.

The burden lies with the City to enforce its regulations.

The burden lies with the Applicant to conduct the use in accordance with these regulations. If the Applicant is unable or willing to do so, the City is required to take appropriate enforcement actions including revocation of Use Permit 2010-027. It is not the resident’s problem to solve.

Eat Chow is asking the City for a discretionary action. In considering this request, the City should take the aforementioned into consideration.

Recommended Actions

1. The City immediately take enforcement action(s) to remedy existing Use Permit and Municipal Code violations;
2. Prior to consideration of UP2013-005, the City must bring the existing use in conformance with its Use Permit 2010-027/Conditions of Approval and demonstrate that the use, as represented in the 2010 permit application or as modified is in conformance with the City's Findings approving UP2010-027. This is required by Condition 51, Municipal Code Section 20.40.060 and the standards set forth in Municipal Code Section 20.48.090;
3. Continue action on UP2013-005 to a future date to allow Staff and the Applicant to address concerns raised by the public; and
4. Instruct staff as a policy to make a reasonable effort to contact surrounding property owners and/or community organizations prior to drafting staff reports and or implementing documents.

Thank you for your consideration of my comments.

Sincerely,

David Tanner
223 62nd Street
Newport Beach, CA 92663
dave@earsi.com

Raul Carrega

Representing a Coalition of Newport Shore Residence

215 62nd Street
Newport Beach, California 92663
949-903-3133

April 9, 2013

Benjamin M. Zdeba
Assistant Planner
Email bzdeba@newportbeachca.gov.

Re: Eat Chow
Project File No.: PA2013-034, Activity No.: UP2013-005
An amendment to expand (outdoor dining)

I am a resident of Newport Beach Shore, my residence is next door. I have been asked by several residences to speak at the schedule meeting Thursday, April 11, 2013 at 3:30 p.m. I cannot attend along with several of my neighbors. I am writing this protest letter for my neighbors and myself.

Noise! Noise! Noise! Delivery Trucks through the back door. That's all we hear since Eat Chow opened its doors. To begin, we neighbors are bombarded with delivery trucks mornings, afternoons and throughout the day. These delivery trucks ignore the Newport Beach Cities red curb and park in front of our houses. As a result, trucks are parked in red zones and the lift gate awakens many of us. Outdoor dining, more trucks in the red zone.

Noise! Noise! Noise! Opening and closing the back door. We hear throughout the day. The opening and closing of the back door is constantly heard throughout the day. Dining, cleaning, patrons can be heard through the open and closed door policy throughout the day. Entering and exiting by employees and vendors, along with watering down mats and other cleaning duties. Outdoor dining - more cleaning and opening and closing the back door.

Noise! Noise! Noise! There is Valet parking in our neighborhood. Eat Chow is running a business in Newport Shores residential neighborhood. Patron's autos are parked in the neighborhood. We are constantly hearing autos during the dinner hours. Auto jams are occurring frequently along 62nd street, not to mention employee street parking throughout the day. Outdoor dining more traffic jams.

Noise! Noise! Noise! There is a Roof top heating/venting machine. This apparatus has a constant humming from 6:00pm to 11:00pm. We are awakening each morning at 6:00am by this heating system every day. There have been several occasions that this system was kept on all night. It's hard to believe that such a small building would require such a huge, ugly and noisy system. Outdoor dining more roof top humming.

My neighbors and I ask that the Zoning Administration of the City of Newport Beach reject this application and that it reevaluates Eat Chow's operation and code violations. We neighbors have had enough of this nuisance activity that is constantly taking place and destroying our once quiet neighborhood.

Sincerely,

Raul Carrega

Representing a coalition of Newport Shore Residence

To: ZONING ADMINISTRATOR
Subject: Additional Materials Received

Item No. 5e: Additional Materials Received
Zoning Administrator April 11, 2013
Eat Chow Outdoor Dining Permit (PA2013-034)

From: John Guerrero [<mailto:john.guerrero@us.ibm.com>]
Sent: Wednesday, April 10, 2013 11:45 AM
To: Zdeba, Benjamin
Cc: Cosylion, Matt
Subject: Eat Chow Outdoor Dining MUP

Hello Ben Zdeba,

I am writing to you to express my concerns regarding the proposed outdoor dining area at the Eat Chow restaurant located on 62nd street in Newport Beach CA. Additional dining capacity at Eat Chow will exacerbate the insufficient parking situation at the restaurant and further adversely affect residents of the Newport Shores community.

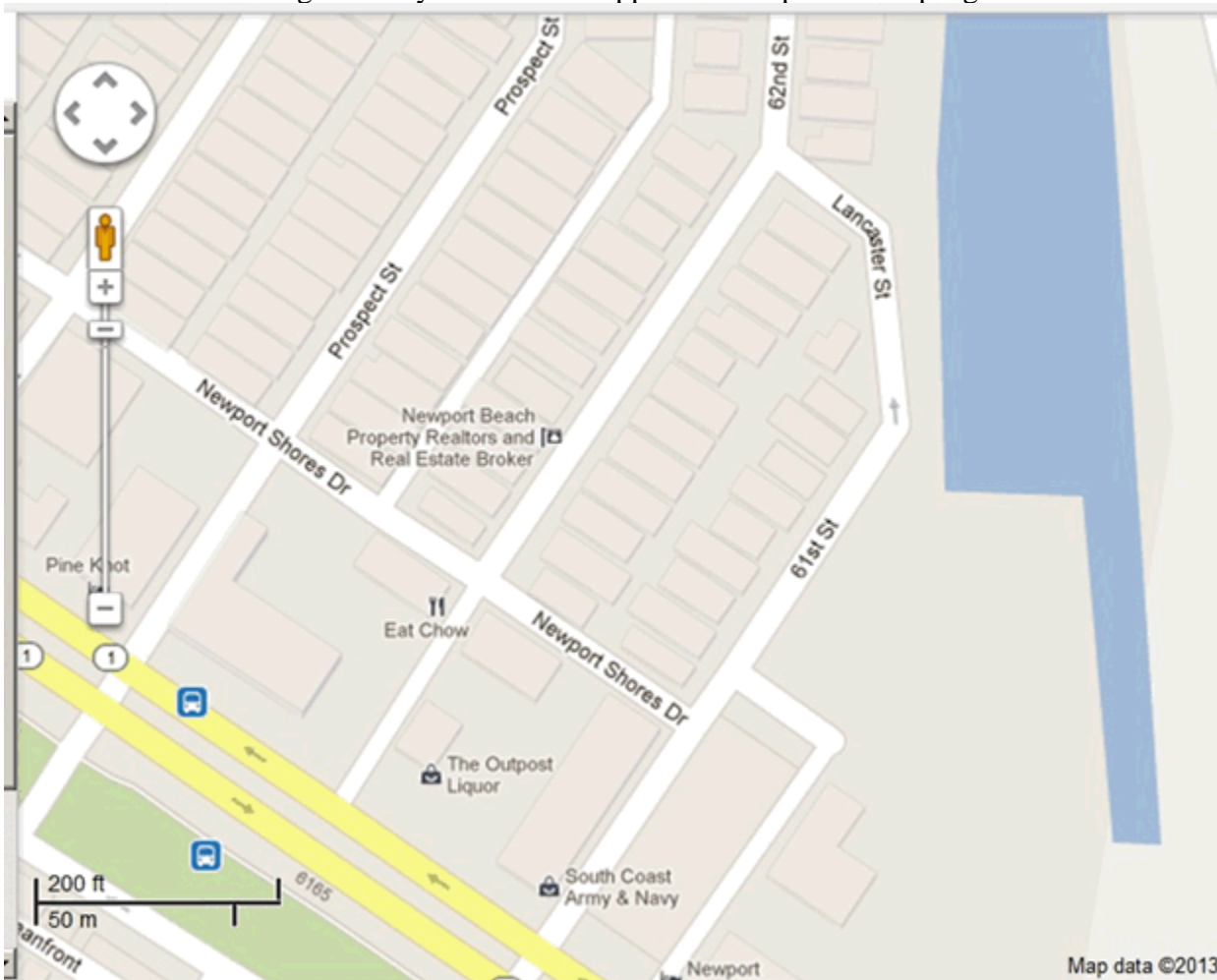
The Eat Chow restaurant does not have adequate parking capacity for its patrons and employees. I raised this issue with the owner of Eat Chow, prior to the restaurant's opening. The owner stated to me, that his employees would not be parking in front of homes in the Newport Shores community and thus would not adversely affect the neighborhood. Rather, his employees would park on 61st street behind the JEL Studios, Army Surplus, and Harbor Catering businesses. As an act of good faith, I took the owner at his word. However, since opening week of the restaurant, Eat Chow employees have continued to park on the residential streets of the Newport Shores community. I informed an Eat Chow employee that was parked in front of homes on 62nd street, that the owner of Eat Chow said employees were to be parking behind the businesses on 61st street. The employee said "I will ask the owner". The employee did not move his car and has since, continued to park in front of the homes on 62nd street. A week later, I spoke with the manager (Jessica) at the Eat Chow restaurant regarding the statement made by the owner about employee parking. Jessica stated that she would send out an email to employees, to remind them to park behind the businesses on 61st street. Many weeks have passed and there has been no subsiding in the number of Eat Chow employees parking on the residential streets of the Newport Shores community, despite availability of parking behind the businesses on 61st street. Several weeks after speaking with the manager, I raised this issue with the owner of Eat Chow, his statement to me was "They aren't parking on 61st street? They should be! It is in their employee hiring packet." Weeks have passed since this discussion with the owner and there still has been no noticeable change in employee parking behavior, despite available parking behind the businesses on 61st street.

As mentioned above, Eat Chow does not have adequate parking capacity for it's patrons. This is particularly evident during the evening hours of operation. To mitigate this situation, Eat Chow has initiated a valet parking service during the evening hours of Friday, Saturday and Sunday.



However, Eat Chow does not have a designated area for valet parking on their property. Thus, the valet parking service utilizes the residential streets of the Newport Shores community for valet parking.

The valet service utilizing public streets is not only a probable city code violation but has now created a public safety issue. On multiple occasions I have witnessed the valet attendant speeding thru the community in an effort to reach open parking spaces. As an example, on the evening of February 18th, I was driving Eastbound on Newport Shores Ave, when the valet attendant abruptly pulled out in front of me from 62nd street, despite the fact that I had the right of way and he was supposed to stop at the stop sign on 62nd street.



He obviously had seen the open parking space on the Southbound side of 62nd street, one car length in from Newport Shores Drive. He continued Eastbound on Newport Shores Drive at a very high rate of speed before quickly turning left on 61st street. At the time, I was unaware that the driver of the vehicle was a valet attendant. I too saw the open parking space on the Southbound side of 62nd street. I turned left down the alley between 61st and 62nd street. This route is a "short cut" back to 62nd street. Despite the shorter distance, as I traveled less than three quarters down the alley, I saw the vehicle driven by the valet attendant speed past the end of the alley! There is no way he could have covered that much distance without speeding down 61st street. He then raced to the open parking space near the end of 62nd street. Seconds later he was backing into the parking space as I turned onto 62nd street. When I spoke with the valet attendant later that evening he admitted "I am racing everywhere to park these cars."

There are many children in the Newport Shores community. There is a children's park on 61st street. This is the same street that the valet attendant was speeding down. I frequently take my 4 and 6 year old children to this park. Our community also has a good amount of pedestrian and bike traffic, even in the evenings. In the evenings, Newport Shores is a dark community as we do not have street lights. The inherent hurried nature of the valet parking service is adversely affecting traffic safety in our community.

I ask that you consider the safety and well being of the residents of the Newport Shores community and not allow the insufficient parking situation at the restaurant to continue or worsen. I also ask that the owner of Eat Chow, work with the City, neighboring businesses and affected residents of the Newport Shores community to find an amicable solution to the restaurant's insufficient parking situation.

As a solution, I suggest that Eat Chow put together a parking management plan and share it with the community. More specifically, I suggest Eat Chow not utilize residential streets to supplement it's insufficient business parking but work with neighboring businesses and make use of existing commercial parking immediately adjacent to the Eat Chow restaurant. The neighboring businesses include JEL Studios, Harbor Catering, the John Wayne Foundation, South Coast Army and Navy, and the Outpost.

I am open to a dialogue with Eat Chow to address and resolve the insufficient business parking situation. I also welcome the existence of the Eat Chow restaurant and the services it can provide. However, expanding the dining capacity for a business that already has insufficient parking capacity for it's employees and patrons, will exacerbate the burden on a residential beach community already challenged with parking from beach goers, existing businesses, and multi tenant residences.

Regards,
John Guerrero
Home Owner and Resident of Newport Shores

Opposed to Increased Traffic and Parking Shortages

The undersigned home owners, residents, business owners and business employees do hereby oppose the proposed amendment to a use permit allowing for the addition of an outdoor dining area at the existing Eat Chow restaurant located at 211 62nd Street in Newport Beach CA.

The existing dining capacity has adversely affected the traffic and parking conditions in the Newport Shores community. Additional dining capacity will further exacerbate the increased traffic and parking shortages directly in front of and adjacent to our homes and businesses.

We urge Newport Beach public officials not to amend the existing Eat Chow restaurant use permit.

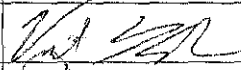
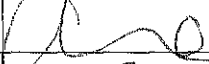
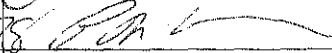
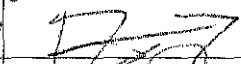


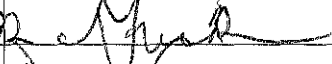
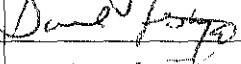
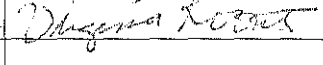
	Name	Address	Phone	Signature
1	John Guerrero	214 Prospect St.	949/631-7910	[Signature]
2	NICO IRELAND	219 62 nd St	(626) 818-3417	[Signature]
3	CHRISTIE IRELAND	219 62 nd St	(626) 818-6503	[Signature]
4	TED SAWYER	230 62 nd St	949-724-4753	[Signature]
5	Don Niebuhr	235 62 nd St	(949) 244-7870	[Signature]
6	Sally Taylor	235 62 nd St	949 246-2919	[Signature]
7	David Tanner	223 62 nd St	646 8758	[Signature]
8	Zach Silverman	218 Prospect	415-390-1111	[Signature]
9	Alexa Smith	218 Prospect	949 765-5416	[Signature]
10	Katherine Racanace	218 Prospect	949-300-2504	[Signature]
11	Cody Wagner	218 Prospect	520-271-782	[Signature]
12	Kellie Crowder	251 62 nd St.	949)310-6997	[Signature]
13	JORDAN Crowder	251 62 nd St.	949 310 6998	[Signature]
14	Elizabeth Airth	239 61 st Street, NB, CA	949 722-0766	[Signature]
15	DAVID AIRTH	239 61 st ST N.B.	949 722-0766	[Signature]
16	Cathy Viglione	415 62 nd ST NB	(949) 929-3688	[Signature]
17	Tim Viglione	415 62 nd ST	949 646 2836	[Signature]
18	[Signature]	415 62 nd ST	714-920-2165	[Signature]
19	MARION RLI	247 62 nd ST	949-645-0512	[Signature]
20	GRET TODD	246 Prospect St	949 378-7790	[Signature]

Opposed to Increased Traffic and Parking Shortages

The undersigned home owners, residents, business owners and business employees do hereby oppose the proposed Use permit UP2013-005 allowing for the addition of an outdoor dining area at the existing Eat Chow restaurant located at 211 62nd Street in Newport Beach CA.

The existing dining capacity has adversely affected the traffic and parking conditions in the Newport Shores community. Additional dining capacity will further exacerbate the increased traffic and parking shortages directly in front of and adjacent to our homes and businesses.

We urge Newport Beach public officials not to approve UP2013-005.

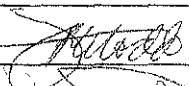


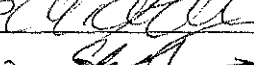




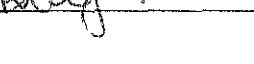
	Name	Address	Phone	Signature
1	VINCENT KARDOS	23531 LIPARI, LAGUNA HILLS, CA	949-701-8542	
2	Adriana Callas	227 62 nd St, Newport Beach	714-595-6370	
3	Pat McCalla	234 62 nd NB	233-5478	
4	Robert Leduc	259 62 nd st. NB	949-413-7614	
5	OSCAR CHAVEZ	243 62 nd ST NB	714-206-8751	
6	Gary Lopez	243 62 nd ST NB	949-230-1096	
7	Gordy Brown	6001 Newport Shores Dr	949-600-0330	
8	DAVID PASTIGUI	215 61 st N.B.	714-421-1403	
9	Virginia Kowitz	215 61 st N.B.	949-233-6072	
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Opposed to Increased Traffic and Parking Shortages

The undersigned home owners, residents, business owners and business employees do hereby oppose the proposed amendment to a use permit allowing for the addition of an outdoor dining area at the existing Eat Chow restaurant located at 211 62nd Street in Newport Beach CA.

The existing dining capacity has adversely affected the traffic and parking conditions in the Newport Shores community. Additional dining capacity will further exacerbate the increased traffic and parking shortages directly in front of and adjacent to our homes and businesses.

We urge Newport Beach public officials not to amend the existing Eat Chow restaurant use permit.


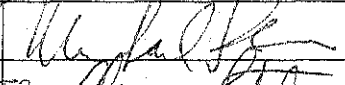
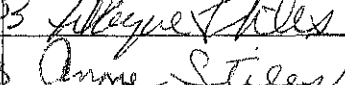
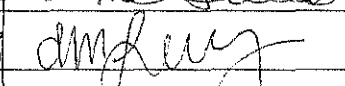
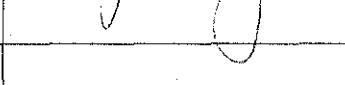
	Name	Address	Phone	Signature
1	TODD, ROSEMARY	246 Prospect St. N.B.	949-613-7063	
2	Margaret Guerrero	214 Prospect St NB	949-631-2111	
3	Lorenzo Peña	219 62nd St NB	949-230-0369	
4	Victor	246 62nd St NB	949-647-1113	
5	Edo Guidotti	1600 W. COAST HWY NB	949-631-4880	
6	Michael Daily	238 62nd St NB	714-308-3272	
7	Jean Daily	238 62nd St NB	714-412-1526	
8	Shirley Gougeon	239 62nd St NB	714-960-8212	
9	Brittany Miller	131 34th St Newport Beach	310-890-2580	
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We urge Newport Beach public officials not to amend the existing Eat Chow restaurant use permit.

	Name	Address	Phone	Signature
1	Mike Powers	235 61 st	949 836 0101	
2	Michelle Powers	235 61 st	914 290 3114	
3	Dayne Stiles	219 61 st	(949) 645-8053	
4	Anne Stiles	219 61 st	949-645-8053	
5	danielie lavery	243 61 st	949-618-9183	
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Opposed to Increased Traffic and Parking Shortages

The undersigned home owners, residents, business owners and business employees do hereby oppose the proposed Use permit UP2013-005 allowing for the addition of an outdoor dining area at the existing Eat Chow restaurant located at 211 62nd Street in Newport Beach CA.

The existing dining capacity has adversely affected the traffic and parking conditions in the Newport Shores community. Additional dining capacity will further exacerbate the increased traffic and parking shortages directly in front of and adjacent to our homes and businesses.

We urge Newport Beach public officials not to approve UP2013-005.

	Name	Address	Phone	Signature
1	Brittany Ballou	20701 Beach Blvd.	(714) 4673-9623	Brittany Ballou
2	Christy Hartson	11662 Newport Blvd #17	714-271-6885	Christy Hartson
3	Lindsay Watson	21161 Blundell St #150	529 265 3456	Lindsay Watson
4	Alfredo Lopez		714 434 6140	Alfredo Lopez
5	Jorge Espinoza			Jorge Espinoza
6	Cynthia Lopez		714 434 6140	Cynthia Lopez
7	J. M. Escobar M.		949 278 9120	J. M. Escobar M.
8	Emilio M.			Emilio M.
9	Laura Geisert	10873 Kosswick Ln HB 92644	(559) 246 7152	Laura Geisert
10	Dora Pitsidianakis		714 656 5834	Dora Pitsidianakis
11	Ann Hatfield	257 Dye St	949 230 2059	Ann Hatfield
12	Eduardo Reyes	714	714 561 2302	Eduardo Reyes
13	Angelica Hoy	222 Prospect	949 548-6598	Angelica Hoy
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Notes for 418 Carnation Avenue Parcel Map Public Hearing

The construction at 418 Carnation Avenue doesn't have a sidewalk and parkway along First Avenue. Instead, the contractor has put in landscaping in the public right-of-way.

This means people with strollers, walking dogs, and just walking along First Avenue, will not have use of a sidewalk but instead will be walking onto the street. This is not just an inconvenience, but also a hazard, given the traffic and the narrow street.

This is a highly-used route in large part because it is a route to Begonia Park. It is an approach to a busy intersection at Carnation and First Avenues. In addition, Carnation Avenue is a thoroughfare, with a significant amount of traffic from both directions making turns onto First Avenue. So people are unnecessarily being put in danger by having to detour into the street.

Other new developments on the block of First Avenue put in sidewalks and parkways. This includes the home just up the block on the same side of the street, at 419 Dahlia Avenue. Also, a corresponding home a block away, at Carnation and Second Avenues, has a sidewalk and parkway along Second Avenue. As also does the house at the diagonal corner from 418 Carnation, at 421 Dahlia, which broke ground the same day as 418 Carnation.

We understand that there was another problem with 418 Carnation violating standards, having to do with encroachment into the front setback, and that the contractor was required to remove part of the encroachment, but most of it was allowed to stand. So this development has a history of violating standards for new construction. They shouldn't be allowed to deviate from standards again.

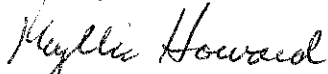
P. O. Box 411
Corona Del Mar, CA 92625
April 11, 2013

TO: Zoning Administrator
City of Newport Beach

RE: 418 Carnation Avenue Parcel Map Public Hearing of April 11, 2013

REQUEST: Continue this application to a future date to allow for consideration of public right-of-way issues (sidewalk and encroachment) as detailed in the attached letter to the Public Works Director dated April 9, 2013 and oral testimony given at today's hearing.

Thank you.


Phyllis Howard

Attachments (5)

SENT CERTIFIED MAIL, RETURN RECEIPT

P. O. Box 411
Corona Del Mar, CA 92625
April 9, 2013

Mr. David Webb
Public Works Director
Public Works Department
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA

Dear Mr. Webb:

RE: 418 CARNATION AVENUE – NEW HOME CONSTRUCTION

Please evaluate the First Avenue side of this house for encroachment into public right-of-way.

Please assure that standard, safe sidewalks are installed for the entire length of the house. No one, including the handicapped, people pushing baby carriages, etc. can walk in the street safely.

If you wish further comments from me or from other neighbors, please contact me. Our phone number is (949) 675-8219.

We have enclosed pictures showing the current condition of the area.

Thank you for your prompt attention to this matter.

Sincerely,

Phyllis Howard

04.09.2013



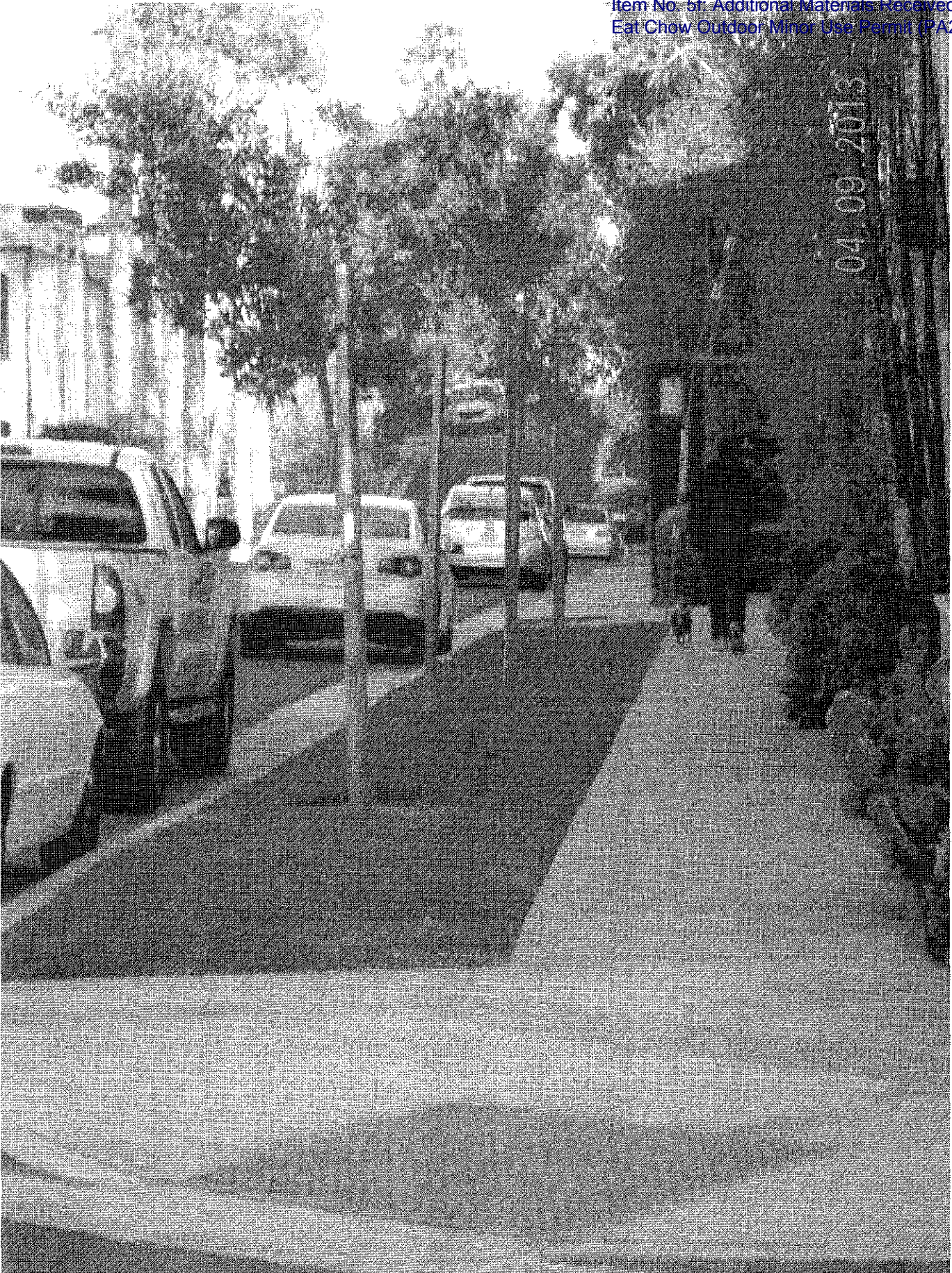
418 Carnation along First Avenue, looking toward Carnation, showing landscaping that was put in April 6. There is no sidewalk and parkway along the length of the house.



The home up the block from 418 Carnation, on the same side of the street. Shows sidewalk and parkway created when house was built. The utility box was moved when house was built.



418 Carnation from Carnation Avenue. There is no sidewalk alongside the house. This shows the site for handicap access ramp, but with nowhere to go once access has been gained.



The corresponding view up the block at Carnation and Second Avenue, showing its sidewalk, handicap access ramp, and streetside parkway.

Item 5. Eat Chow Outdoor Dining (PA2013-034)

In the draft Resolution of Approval:

- Section 2.1: there is no “*Section 15301 of the California Environmental Quality Act.*” It is a section of the *Implementing Guidelines*. See Section 2.1 of today’s Item 3 for a more accurate finding.
- Condition 32 is probably intended to read “... *on any property adjacent to the licensed premises under the control of the licensee.*”
- It does not appear all the conditions from the earlier permit have been copied into the new one.